



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

### **INTERVIEW TO FILL ONE VACANCY ON THE PARKS AND RECREATION COMMISSION**

#### **RECOMMENDED ACTION:**

Interview Applicants to fill Vacancy on the Parks and Recreation Commission

**Agenda Item # 1**

**Prepared By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

On April 10, 2002, the City Council interviewed six individuals to fill four vacancies on the Parks and Recreation Commission: Mark Frederick, Robert Graham, Daniel Kenney, Marilyn Librers, Wesley Rolley and Wayne Tanda. The Council appointed Mr. Frederic, Mr. Kenney, Mr. Rolley and Mr. Tanda to serve two year terms. Since the appointment, Mr. Tanda has resigned from the Commission due his acceptance of a job offer in southern California. Staff is recommending that the Council interview Mr. Graham and Ms. Librers to fill the vacancy as they both indicate an interest in serving on this Commission. Mr. Graham's and Ms. Librers' applications are attached for Council reference. Staff has scheduled, under the regular agenda, the Mayor's appointment of one of these two applicants to serve Mr. Tanda's unexpired term.

**FISCAL IMPACT:** The time necessary to prepare this staff report is accommodated in the Council Services & Records Manager's operating budget.



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *July 31, 2002*

### **MAYOR AND CITY COUNCIL OFFICE SPACE**

#### **RECOMMENDED ACTION: CONSIDERATION OF A PROPOSED MODIFICATION TO CITY COUNCIL OFFICE SPACE PLAN SCHEME**

#### **EXECUTIVE SUMMARY:**

At the City Council's June 5, 2002 meeting, the City Council was presented four alternative office plan schemes. Christopher Noll, Noll & Tam Architects, assisted staff with the preparation and presentation of the alternative schemes. At the June 5, 2002 meeting, the majority of the City Council supported Alternative 3.

Mayor Kennedy indicated, at the June 5 meeting, that he would work with staff and the architect to see if another alternative scheme would address Council Member Chang's recommendation that each council member be afforded individual work stations. At the conclusion of the meeting, Mayor Kennedy, Mr. Noll and Council Services and Records Manager Torrez reviewed existing office space. It has been identified that the El Toro Conference Room could accommodate two work stations. Attached to the staff report is Alternative 3A scheme that reflects these two work stations in association with the conference room.

Attached to the staff report are the following: June 5, 2002 staff report, June 5 minutes, cost estimates for Schemes 1-4, and Scheme 3A which incorporates two additional work stations. Also, attached is a cost estimate from Noll & Tam Architects for professional services to prepare and complete construction documents for City Council office renovation at a cost estimate of \$20,000. Staff has spoken with Building Division staff members who indicate that they can prepare construction drawings, if they are able to fit it into their busy schedules and become fully staffed. This would result in a \$20,000 cost savings.

Staff is unable to identify the cost of office furniture at this time as it is unknown whether freestanding or partition furniture will be used to furnish the office space or whether some of the existing furnishings can be used. Noll & Tam Architects estimates that the cost to furnish Scheme 3 would be approximately \$35,000-\$40,000 and an additional \$10,000 for two work stations associated with Alternate Scheme 3A. The City will also need to retain the services of an interior designer to assist staff with office furnishing. This cost will need to come from the budgeted amount.

**FISCAL IMPACT:** The City Council's Fiscal Year 2001-02 budget included \$100,000 to retain the services of a professional firm to assist staff with plan scheme alternatives. \$10,610 of this amount has been awarded to Noll & Tam for their assistance in this project. Staff is recommending that the remaining \$89,390 be carried over to the Council's Fiscal Year 2002-03 budget to be used toward remodel efforts for Alternative 3 or 3A. On June 26, 2002, the City Council approved the Fiscal Year 2002-03 budget that included \$50,000 to assist with office furnishings (e.g., workstations/furniture, computers, telephones, etc.). This would result in a Fiscal Year 2002-03 budget of \$139,390 that can be applied toward remodel of office space for council, including furnishings. Some of these funds will be used to retain the services of design professionals, cost to be determined. Staff will not know the total cost for the project until we actually cost out the entire project. If it is found that the remodel cost exceeds \$139,390, staff will return to the City Council for direction.

**Agenda Item # 2**

**Prepared/Approved  
By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**

**CITY OF MORGAN HILL  
JOINT SPECIAL CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - JULY 10, 2002**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the meeting to order at 6:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Mayor/Chairperson Kennedy, Council/Agency Members Carr, Chang, Tate, Sellers

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the following closed session items.

**CLOSED SESSION:**

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure to Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**3.**

**EXISTING LITIGATION:**

Case Title: Kennedy et al. v. Davis et al.

Case Name/No.: Santa Clara County Superior Court Case No. CV 803679

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:32 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:05 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that the closed sessions were continued to the conclusion of the meeting's agenda.

**PLEDGE OF ALLEGIANCE**

At the invitation of Chairperson/Mayor Kennedy, retired Police Sergeant Gomez led the Pledge of Allegiance.

**SILENT INVOCATION**

**RECOGNITION**

Mayor Kennedy presented Sergeant Gomez with a Certificate of Recognition for his many years of outstanding service to the community as a member of the Morgan Hill Police Department.

Mayor Kennedy presented Youth Advisory Committee retiring members Leia Layus and Chelsea Laning with Certificates of Appreciation for their years of service to the City.

**PROCLAMATION**

Mayor Kennedy presented Paul Bennett, President of Sakata Seeds and Diana Blea, Human Resources Director, a proclamation in recognition of Sakata Seeds' 25<sup>th</sup> Anniversary in Morgan Hill.

Mayor Kennedy presented a proclamation to Mitch Dedert, with PG&E, designating June as PG&E Care Month. It was noted that PG&E is directing a comprehensive education and outreach campaign to increase the participation of residential customers who qualify for the CARE Program, which provides qualified PG&E low and fixed income household residential customers with a 20% discount on monthly gas and electricity bills.

### **CITY MANAGER'S REPORT**

City Manager Tewes informed the public that now is the time to be contacting state legislators as not much is being done with the State's budget, noting that they are in session. He said that the State has gone without a budget since July 1, the constitutional deadline and that there appears to be no momentum to reach a solution. He said that there is discussion that there may not be a budget until September. He stated that the Council adopted the City's budget on certain assumptions that depend upon resources allocated by the State or allocations in accordance with law established by the legislature. He said that there is still a great amount of uncertainty and that it appears to be setting up to be a historic delay in the adoption of the annual budget for the State of California.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **PUBLIC COMMENT**

Mayor Kennedy opened the public comment for items not appearing on this evening's agenda. He congratulated the Pride of Morgan Hill Softball teams, noting that the Morgan Hill Times reported that the 10 & under team finished 2<sup>nd</sup> in the State and will be going to the national tournament in Springfield, Missouri. The 12 & Under team also finished second in the State and will be going to the national championships. He stated that the Council is proud of the softball teams, indicating that the Council would be recognizing the teams at a future Council meeting. He wished the teams, families, and coaches the best as they go through the championship tournament and congratulated them on their successes. Also, the Morgan Hill Pinto baseball team is progressing in the baseball tournaments as well. No further comments were offered.

### **CONSENT CALENDAR:**

## ***City Council Action***

Council Member Chang requested that item number 2 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr,*

*the City Council unanimously (5-0), **approved** Consent Calendar Item 1 and 3-9, as follows:*

1. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF STEPHAN C. VOLKER**

***Action:** **Authorized** the City Manager to Execute Amendment to Agreement With the Law Firm of Stephan C. Volker.*

3. **PILOT JOINT USE FACILITIES AGREEMENT BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT AND THE CITY OF MORGAN HILL**

***Action:** **Authorized** the City Manager to Enter Into a Pilot Joint Use Facilities Agreement Between the Morgan Hill Unified School District and the City of Morgan Hill.*

4. **AWARD OF CONTRACT FOR SLURRY SEAL AND ROADWAY REPAIR PROJECT**

***Action:** **Awarded** Contract to Silicon Valley Paving for the Construction of the Slurry Seal and Roadway Repair Project in the Amount of \$147,222.75, subject to review and approval by City Attorney.*

5. **APPROVE SOLE SOURCE PURCHASE OF WATER METERS**

***Action:** **Approved** Purchase of Water Meters, Meter Parts and MXUs from Invensys Metering Systems (formerly Sensus Technologies) in Accordance With Section 3.04.120.A(4) of the Municipal Code - Brand Names or Equal Specification, and Section 3.04.150.C - Sole Source Purchases.*

6. **APPROVAL OF CONTRACT/FUNDING FOR CONTRACT/TEMPORARY ENGINEERING SERVICES**

***Action:** **Approved** Contract and Funding for Two Temporary Full-time, and One Contract Part-time, Engineer, subject to review and approval by City Attorney.*

7. **AWARD CONTRACT FOR CONSTRUCTION OF THE WARREN/HALE/NOB HILL TERRACE STREET IMPROVEMENT**

***Action:** **Awarded** Contract to Wattis Construction Company, Incorporated for the Construction of the Warren/Hale/Nob Hill Terrace Street Improvement Project, subject to review and approval by City Attorney.*

8. **SUBDIVISION APPLICATION SD 01-10: COCHRANE-COYOTE ESTATES**

***Action:** **Took No Action**, Thereby, Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

9. **SUBDIVISION APPLICATION SD 01-11: COCHRANE-MISSION VIEW**

***Action: Took No Action.** Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

2. **MEMORANDUM OF UNDERSTANDING WITH MORGAN HILL UNIFIED SCHOOL DISTRICT AND SAN JOSE REGARDING PROVISION OF SERVICES TO SOBRATO SITE**

Council Member Chang requested that staff explain the traffic portion of the report.

City Manager Tewes stated that the agreement before the Council is a comprehensive agreement by which the City would provide public services, including sewer and water, to the new high school. Consistent with conditions previously established by the City Council in previous agreements, the Council has asked that environmental impacts be mitigated. He stated that this agreement identifies traffic to be one of the impacts. He said that the environmental impact report (EIR) adopted by the School District identified a potential problem on Burnett Avenue which when widened to four lanes may still carry a lot of a.m./p.m. peak traffic that would make it somewhat difficult for individuals in the adjacent mobile home parks to access Burnett Avenue, and ultimately Monterey Road. Therefore, the EIR recommended that there be a monitoring of the traffic situation and that if warranted, a traffic signal be installed at a future date. He indicated that this agreement embodies these representations.

Council Member Chang stated that the City-School Liaison Committee has worked hard on this project to make it work. It was her belief that this was not a common situation and that in general, the City would have required additional mitigations such as the installation of a traffic signal as part of project construction.

City Manager Tewes stated that it has been the City's experience that when the City is the lead agency performing the environmental report and a traffic report identifies an adverse environmental impact, the City would require the establishment of mitigation measures. If this meant the installation of a traffic signal, the City would require the construction of a traffic signal as part of the condition of approval. He noted that this is not an instance where the City is the lead agency for the project and that the School District is the lead agency. The School District has determined that they wish to first establish the school's traffic patterns and then determine whether a traffic signal is required. This agreement provides a protocol on how the studies and monitoring will be conducted.

Council Member Tate stated that it was his recollection that the Liaison Committee felt that the school times are not at times when peak hours/backups occur. The School District wanted to monitor traffic to see if it is a serious enough problem. He stated that if he was living in the adjacent trailer park, he would vary his travel plans around the school peak times. He did not believe that a traffic problem would occur.

Mayor Pro Tempore Carr stated that the School District has discussed adjusting their starting and ending times so that the intense period of traffic for the school does not coincide with the intense period of commute traffic on Burnett Avenue.

Council Member Chang inquired whether it would be up to the School District or the City to install the traffic signal if it is found that a traffic signal is needed based on the traffic study should area residents request said installation?

City Manager Tewes responded that it would be the School District's responsibility to install a traffic signal should it be warranted.

Mayor Pro Tempore Carr stated that the agreement stipulates that the School District will use the first year to study the traffic patterns to determine impacts and to determine whether installation of a traffic signal is warranted. He said that the Council could make sure that complaints and comments that come before the City Council are included in the comments in the study the School District completes after a year's period of time.

Council Member Chang said that the City is trying to do everything it can to assist the School District. However, she did not want the City to be responsible for a mitigation measure that the City is not responsible for.

Mayor Kennedy stated that this is a good faith effort, on the City's part, to work with the School District. However, should there come a time that the traffic counts warrant and justify the installation of a traffic signal, he would expect a good faith effort on the part of the School District to follow through with their comments. He felt that the agreement requires this and therefore, he would support the recommended action.

Council Member Sellers felt that the project was unique and that both entities are public agencies directly subject to concerns of the community. It was his belief that if traffic problems are experienced, both agencies would work together to solve the problem.

In response to Council Member Chang's inquiry, Mayor Pro Tempore Carr indicated that should a traffic signal be required, the School District would be responsible for its installation. He felt that the agreement before the Council is one that demonstrates a partnership. The City is providing services provided that the School District. Should the School District does not meet their responsibilities, there would be some services that would be important to it that the City would be providing at risk. Therefore, he felt that the City has leverage in making sure that off site improvements are completed. He felt that should problems arise in the future, they would be addressed, as necessary.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the*



*City Council unanimously (5-0) **Authorized** the City Manager to Execute an Agreement Between the City of Morgan Hill, the Morgan Hill Unified School District, and the City of San Jose Regarding Provision of Police, Fire, Water and Sewer Services to the Sobrato High School Site.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Redevelopment Agency unanimously (5-0), **approved** Consent Calendar Item 10 and Item 11, as follows:*

**10. REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 19, 2002**

**Action:** ***Approved** the minutes as written.*

**11. SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 26, 2002**

**Action:** ***Approved** the minutes as written.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

**12. ZONING AMENDMENT APPLICATION, ZA-00-05: HALE-GLENROCK/SHEA HOMES - Ordinance No. 1572, New Series**

Director of Community Development Bischoff presented the staff report.

Council Member Tate indicated that the staff report references the June 25, 2002 Planning Commission meeting, noting that the staff report did not include these minutes. He said that some issues were raised at the meeting because the action taken was not a unanimous vote. He requested that staff relate what the Planning Commission's issues were.

Planning Manager Rowe stated that the General Plan requires that a row of single family homes interfacing between the R-2 portion of the project and Hale Avenue. Alternative plans were reviewed by the Planning Commission. The most recent alternative shows a drive aisle that extends around the back side of the project so that the units have the garages accessible on the back side and the front elevations face toward the local street inside the development. There was a question

whether these units should be oriented such that the community would be looking at back fences and garages from Hale or whether the units should face toward the creek and recreational amenities. He informed the Council that this issue was not fully resolved. Staff is recommending that the details of the single family homes be addressed as part of the subsequent R-2 RPD amendment so that the applicant can proceed with a tentative map application. He indicated that the Planning Commission supports this action. He said that staff would work out the final details with the applicant and return to the Council at a later date.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1572, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1572, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN IS ON A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**13.    ZONING AMENDMENT ZA: 01-16: COCHRANE-MISSION RANCH - Ordinance No. 1573, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Residential Planned Development Ordinance No. 1573, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Residential Planned Development Ordinance No. 1573, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR THE 98 ACRE MISSION RANCH DEVELOPMENT LOCATED ON THE SOUTH SIDE OF COCHRANE ROAD AND EAST OF MISSION VIEW DRIVE IN THE R-1 (7,000)/RPD ZONING DISTRICT. (APN 728-32-001, 002, 003 AND 728-33-001) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

**14.     ZONING AMENDMENT ZA 01-15: COCHRANE-COYOTE ESTATES - Ordinance No. 1574, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Residential Planned Development Ordinance No. 1574, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Residential Planned Development Ordinance No. 1574, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR APPROXIMATELY 18-ACRES ON THE WEST SIDE OF PEET ROAD FROM R-1 (9,000) TO R-1 12,000 RPD AND INCORPORATING THE AREA WITH THE ADJOINING COYOTE ESTATES DEVELOPMENT, LOCATED ON THE NORTH SIDE OF COCHRANE ROAD AND WEST SIDE OF PEET ROAD. (APN 728-35-008, 9 & 10; 728-36-001 & 10) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

**15.     CONFIRMING THE SANTA CLARA COUNTY FIRE MARSHAL'S REPORT ON BRUSH ABATEMENT**

Assistant to the City Manager Dile presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**            **No Action Taken.**

**16.    APPLICATION ZA-02-07: TEXT AMENDMENT RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) STANDARDS AND CRITERIA**

Senior Planner Rowe presented the staff report.

Council Member Sellers noted that the staff report states that the proposed recommendations would increase the opportunity and allow the City to fill the moderate level gap. He requested that staff explain how the City assures that the Below Market Rate (BMR) units are not shifted from low to medium income units.

Mr. Rowe stated that in order for a project to obtain maximum points in the housing needs category, a developer would need to provide the traditional 10% BMR units. The proposed amendment would provide an opportunity to provide more than the 10%. The Measure P Committee would like to provide the opportunity to be able to obtain additional points but not to the extent to where a developer cannot afford to participate in the BMR program. He informed the Council that the Measure P Committee consulted with the City's Housing staff to make sure that they were comfortable with the proposed amendments and that they would not negatively affect the success of the City's BMR program. He stated that the Housing staff is supportive of the amendments.

Council Member Chang referred to the double park fee, noting that it has been capped at \$3,000 per unit. She inquired as to the justification for capping the double park fee, noting that the Council would be considering fee increases in the future. She inquired why it is being proposed to cap the park fees at \$3,000 at this time, noting that the normal fees would be close to \$5,000.

Mr. Rowe indicated that ongoing projects have made a commitment to pay double fees with one project agreeing to pay triple fees. The cap was based on the understanding of the current in lieu fees that can be factored into the overall budget of a development. If the in lieu fees are raised by a significant percentage, you would double or triple the fees and would represent a substantial increase in what those projects would be required to contribute in fees in lieu of park dedication. He noted that public facility improvements are equivalent to approximately \$1,000 per unit in terms of developers' cost. When you start looking at standard fees and the increases, you would multiply this number to the double or triple commitment. The per unit cost for the three points to be received may be \$2,000 or \$3,000 per unit. This would be well in excess of the \$1,000 per unit cost per point per unit in other categories. It was the goal of the Measure P Committee that commitments made

would equate to \$1,000 per unit to purchase a point. He stated that it would cost more than \$1,000 for the point if a developer pays in lieu fees.

Mayor Kennedy indicated that the Park Master Plan identifies the need for additional public parks. He inquired how the proposed amendments would help achieve the goals of the Park Master Plan? He inquired how the City would fund the new parks that are needed in terms of capital and maintenance costs?

City Manager Tewes said that next week, the Council would be considering recommendations regarding development impact fees. If enacted at the levels proposed, they would be sufficient to meet the Park Master Plan's objective for the acquisition and development of new park space. However, development impact fees cannot pay for the cost of maintenance. He stated that it has been Council policy to take Measure P fees and deposit them into a park maintenance fund. It has been the Council's practice to try to maintain the purpose of the fund and only use the interest earned on the fund for annual maintenance costs. He said that it is this fund that is available to help support the maintenance of existing parks as they are developed.

Mayor Kennedy inquired whether the City would be jeopardizing its ability to provide the funds to maintain the parks by capping these fees?

City Manager Tewes stated that it was his understanding that the cap is proposed at a level that is a little more than the current doubling rate. Therefore, there would not be a reduction in the amounts that would be coming into the funds. He did not believe that the authors of the proposal were considering the City's budgetary concerns or how to finance the capital programs. They were concerned about the Measure P process and how to gain points. This is why it is important for the Council to review the recommendations as the Council would bring forward a different perspective than the authors of the proposed sets of criteria.

Mayor Pro Tempore Carr clarified that the Measure P Committee attempted to have points applied uniformly throughout the standards and criteria where it equates to approximately \$1,000 per unit.

Mayor Kennedy opened the public hearing.

Rocke Garcia indicated that he served on the Measure P Committee. He said that the Committee worked hard on a lot of the issues being discussed. He stated that the Committee felt strongly that the City needs to eliminate mini parks. He noted that more points are gained if a developer expands a local park. He said that the Quimby Act requires so many acres of park per 1,000 residents. He referred to page 254, Section 8 of agenda item 6. The Committee wants to encourage smaller projects to pay the fees so that the City does not have mini parks and that there is better use of dollars. Yet, in item 6, the City is encouraging larger projects to put more into large parks. He would like to encourage smaller projects (10-23 units) to pay in lieu fees in order to eliminate or avoid mini

parks. He acknowledged that these would be private parks, noting that developers would still be paying park fees.

Scott Schilling stated his support of the Planning Commission's recommendations for the Measure P standards and criteria and the competition. He indicated that all projects have to pay current or future park impact fees. The specific area being discussed in the criteria is that if you are a small project of 23 units or less, the developer can opt out of building a park. However, the developer would still have to pay impact fees regardless of whether it is \$3,000 or \$5,000 per unit. If a developer does not install a park, the developer would have to pay the additional funds above and beyond the impact fees in order to not build a park in a project. A developer would have to pay the impact fees in addition to the \$3,000. This would provide an impact fee and additional funds for City parks instead of getting mini parks associated with small projects. He noted that every project would have to pay impact fees, no matter the established amount.

Dick Oliver said that the rationale for limiting the amount is the issue of a nexus (relationship between the fee and the project being built). There has always been a concern that the Measure P point system goes over a certain level and that the City would be forcing developers to pay the fees without a nexus between the project and the fee. If you get too many of these, then Measure P could be subject to litigation for conflicting with State statute. The Measure P Committee is recommending a fee structure that makes sense and has a nexus. It is felt that the \$1,000 per unit is a range that is appropriate.

City Manager Tewes said that the issue of whether or not contributions under Measure P are subject to a nexus or a proportionality requirement is one that home builders have raised a number of times. Staff has consistently held that these are voluntary payments, noting that only 47% of the developers pay them. They are paid only for the purpose of moving ahead in the line to get an allocation earlier rather than later, they are not subject to AB1600 statutory requirements, and that there is no requirement of a nexus. He agreed that it would be good to establish a cap at a certain level but that the cap is not because of the nexus issue.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1575, New Series.*

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** Ordinance No. 1575, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN*

*CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Council Member Tate felt that the Council focused on an area that warranted further review and discussion next year as it moves along.

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **17. CHAMBER OF COMMERCE'S PROPOSED "MARKETING PLAN FOR ECONOMIC DEVELOPMENT AND TOURISM"**

City Manager/Executive Director Tewes presented the staff report. He indicated that the Chamber of Commerce submitted their Economic Development and Tourism/Marketing Plan a few weeks ago. The Council/Redevelopment Agency requested that staff review the plan and provide it with some thoughts on how to proceed. He indicated that staff's recommendations are included in the agenda packet (page 276) for Council/Agency reference. He stated that the plan developed by the Chamber represents a great deal of work by their volunteers and professional staff. In addition to their efforts, the Plan is bold, aggressive and sets a new direction for the Chamber of Commerce. The Plan establishes a new structural organization for the Chamber, one that would move them into a new headquarters and new building for tourism and visitor services. He stated that in addition to the money they are asking the City to contribute, the Chamber is committed to raising over \$100,000 per year than they currently raise in order to implement this plan.

Mr. Tewes stated that staff saw three policy issues that would be appropriate for the Council/Agency to address:

- 1) *Should the City Council and the RDA allocate more public dollars toward economic development staffing and marketing in this era of limited resources?*

Mr. Tewes informed the City Council that at its annual goal setting retreat, it established one of its goals for the year to expand the level of effort in economic development and marketing. The Council specifically requested that staff work with the Chamber to develop a joint marketing plan. Also, at the retreat, the Council indicated its desire to increase the amount of RDA funds available for economic development. In the spring, when the Council went through its allocation process, the Council/Agency increased the allocation available to economic development by \$1 or \$2 million more than had been previously allocated. With respect to marketing, the Council/Agency indicated that there should be an expanded effort. He stated that it is staff's recommendation that the expanded effort be established with a price tag of \$50,000, an amount sufficient to be used for marketing

materials, ad placements, etc. This \$50,000 would be in addition to the existing \$90,000 which the Council/Agency could consider a base level of support. He stated that the Council has always recognized that economic development is an investment in the future.

- 2) *Should the Council/Agency agree that the City should spend more, should the focus of the spending be on the items identified in the Chamber's plan, specifically tourism and visitor services?*

Mr. Tewes indicated that the Chamber is proposing that funding be spent to support staff and marketing. He stated that the Chamber has included an effort in promoting tourism and providing visitor services. He suggested that this is a small part of the local economy and asked if this is where the City wants to pay the extra dollar, if it had one (tourism). He indicated that the General Plan lists a number of economic development goals. The Council adopted, in the General Plan, a goal that the City promotes additional tourism. He said that the General Plan goal was to work on finding visitor attracting facilities and things that would attract tourists (e.g., museums, etc.). If the private sector was to come through with the subsequent phases of the aquatic center, the City would have an outstanding aquatic facilities that would bring visitors and tourism. He said that one can promote tourism and economic development by building tourism facilities and encouraging them or by providing services to tourism as suggested in the Chamber's proposal. He said that staff believes that this is something that the Council/Agency should think about. Staff recommends that the Council/Agency consider establishing a subcommittee to work with the Chamber on how to move forward on the tourism goal and to check/test availability of other new private resources that are promised in the plan to see whether those in the tourist and hospitality industries are prepared to support such an effort. Staff further recommends that the Council/Agency look at other options such as establishing a subregional visitors tourism effort with Gilroy and others or contract with San Jose. Staff felt that it was important for the Council/Agency to proceed to evaluate options before it makes a final judgement in this area.

- 3) *Should the economic development strategy of the City and the Agency be implemented by adding staff at the Chamber of Commerce and the suggestion of the plan that they proceed working on business attraction/retention in a more proactive way?*

Mr. Tewes indicated that the material presented to the Council/Agency suggests that the City proceed with this work. The question is whether the City should spend more. He said that it is staff's recommendation that before the City makes a multi year commitment to provide additional staffing to be proactive, the City needs to be clear what is meant by being "proactive." Staff is recommending that the Council/Agency first go through a process of clearly identifying its economic development strategy. He noted that the Council has adopted a similar approach with respect to the Housing strategy that is underway and would be presented to the Council before the end of the calendar year. In this year's workplan, staff committed to the Council the development of an economic development strategy and that it would be appropriate to work with the Chamber in its



development. Staff does not recommend that the City proceed with a multi-year financial commitment until the City first has the strategy in place that would be implemented by the Chamber and City staff.

Mayor/Chairman Kennedy opened the floor to public comment.

Alex Kennett acknowledged members of the Chamber staff, Chamber Board and members of the Chamber of Commerce in support of the Chambers' efforts to improve economic development in Morgan Hill. He said that the Chamber has brought forth and was given some tools in which to do a job in terms of promoting, retaining and gaining businesses (economic development in general). The result of this is that the Chamber/City is here again 10 years later, with no change. He said that just enough money was provided 10 years ago to provide the tools but not the means to use the tools. This is what he sees again tonight in staff's recommendation. He always felt that during the process of bringing forth economic development and a tourism plan that the General Plan Update is the basic document to direct economic development. He said that Chamber prides itself in its cooperative efforts in developing this economic development plan and tourism plan. He indicated that at every Chamber meeting, there was at least one city staff member as well as one elected council member in attendance the entire process. He felt that staff's answer to the plan was an answer to a different plan and was not the one that the Chamber worked on.

Sunday Minnich, Director of the Chamber of Commerce, highlighted some of the items from the marketing plan which the Chamber feels are important and addressed some of the questions listed in the staff report. She said that the Chamber has looked at the entire development of this plan over the last five months as a joint partnership with the City. She said that the plan is not developed for the Chamber to do the marketing as a stand alone but in partnership with the City of Morgan Hill. She indicated that this is the Chamber's number one priority. The Chamber felt that with staff's participation over the last five months, the Chamber had the City's support. She indicated that the marketing plan addressed staff's lower priorities in order to allow staff to focus their time on high priorities (e.g., implementation of the auto district strategy and providing ombudsman services to businesses). She informed the Council/Agency that she received a call from a construction company with a client who read about Morgan Hill's interest in developing an auto district and would like to discuss bringing car dealerships to Morgan Hill. She noted that this person read this through a proactive approach that the City took in promoting and marketing the auto district. She indicated that she immediately referred this call to Mr. Toy in order to schedule a meeting for Thursday morning as it is an item that is on the City's high priority list. She felt that this was a perfect example of how the City's proactive approach in promoting marketing helped to promote Morgan Hill's interest in an auto district. She pointed out that this professional firm made their first point of contact with the Chamber of Commerce to obtain information. This is an example of how a partnership with the City and the Chamber can work through marketing efforts.

Ms. Minnich stated that the report the Council/Agency received from staff also states the

phenomenal industrial and commercial growth the City has experienced over the past three years. She applauded the City for facilitating the growth and felt that the figures presented in the report were perfect examples on how marketing is important to fill the space that have been facilitated by Business Assistance and Housing Services staff for business development. It is the Chamber's intention to develop, plan, and fill vacant buildings that have already been zoned and approved for development. She felt that the direction should come from city staff and Council through their facilitation of growth and what has been approved through the Visioning Process in the General Plan Update. She stated that the Chamber does not have intentions of marketing what the City does not feel would fit in with the infrastructure. The Chamber does not have a desire to alter land uses or negotiate city services or program. She indicated that the partnership is one that the Chamber would market and the City could provide services.

Ms. Minnich requested that the Chamber be funded through the Redevelopment Agency for money already allocated for economic development. In return, she said that the Chamber would increase the Transient Occupancy Tax (TOT), sales taxes, and property taxes which contribute to the General fund to support city services that improve the quality of life for residents. She noted that the staff report states that the Chamber must either increase sales tax by approximately 1.5% or the TOT by 10% for the marketing plan to pay for itself. She noted that the report does not state anything about property tax which the Chamber plans on increasing as well. The Chamber believes that it can meet the goal if the marketing plan is adopted. To alleviate any confusion about the hiring of a staff person, the marketing plan states that the marketing professional will be an employee under the day by day management of the Chamber. Because of the importance of the Chamber's partnership with the City, the Chamber has asked city representatives to assist with the selection of this employee. She said that the Chamber would be accountable to the City based on its contract and the implementation of the marketing strategy as outlined in the marketing plan. If the City decides to hire a marketing person or consulting firms, the City would not receive the benefit of private funding or have the regional relationships that the Chamber has already established. She indicated that two task force committees consisting of professional individuals have put a lot of time and effort into the marketing plan. It is felt that the Chamber has addressed staff's comments, questions and concerns submitted throughout the past five months. With Council/Agency approval, the Chamber is ready to work with city staff to hire a marketing professional and start the partnership in marketing Morgan Hill.

Mr. Kennett said that staff's recommendation ignores two important issues: 1) The Chamber was given the mandate of a sense of urgency. He stated that the sense of urgency is not addressed. He said that the Chamber cannot spend much more time on consultants or time to develop a plan. 2) The City would provide the Chamber with just enough marketing tools but not the implementation of the tools. He said that the Chamber can get its website up and all the tools to implement the marketing plan. However, there is no one in place to make the marketing plan work.

Council/Agency Member Sellers stated that he has conducted economic development in a smaller

scale. He said that in recent years, there have been attempts to throw money at the problem and to buy that which may not be economically feasible in a community. He felt that this has always been a short-sighted approach. He noted that Gilroy has thrown millions of dollars at big box retailers, and that Morgan Hill has not done this nor has Morgan Hill done it successfully. He inquired whether the allocations being requested by the Chamber are sufficient to accomplish the marketing plan without the need to return for additional funding?

Ms. Minnich responded that the Chamber takes its direction from the Council. If the City does not want big boxes, the Chamber would not go after big box businesses. She indicated that the Chamber is providing marketing and bringing staff businesses. It would be up to staff to negotiate City programs and services with the businesses. She noted that the Chamber is not looking to rezone properties. The Chamber is looking to fill what has already been included in the General Plan update and what has been zoned industrial, commercial and vacant space to help businesses thrive and to create jobs in Morgan Hill. The Chamber is not looking for sprawl, but looking for infill through the visioning of the General Plan update.

Council/Agency Member Sellers inquired whether the City would end up in a situation where each quarter the City would receive requests to spend significant amounts of capital should the City enter into this agreement.

Mr. Kennett felt that the Chamber has identified its funding needs, noting that the Chamber is looking at a five-year process.

Rocke Garcia stated that as a local developer and home builder, he supports the Chamber's Marketing Plan. He felt that a full time marketing professional would help and that he did not believe that enough can be spent toward marketing.

David Dworkin, Holiday Inn Express, indicated that he has had extensive work in the hotel industry over the last 12 years from Monterey to San Francisco, running six hotels last year. He said that the City is two-years late in its economic development efforts. He said that the TOT is the primary source of funding for the general fund. He felt that the City over developed hotels. If there are too many hotel rooms and not enough demand, it would result in lower rates. He said that the TOT is down approximately 45% from the prior year. He said that this is normal for Silicon Valley, noting that Silicon Valley is taking a harder hit than most of the other areas. Tourist areas such as Monterey are not experiencing a problem. He felt that the City needs to make sure that it allocates the Chamber in both aspects. He felt that the City has all the tourist ingredients talked about such as nearby golf courses, movie theaters, wineries, etc. He recommended a long term commitment between the City and the Chamber in order to be successful because it would take many years to see results.

Mayor/Chairman Kennedy stated that he has heard that in order for tourism to work, the City needs

major attractions in Morgan Hill that are lacking. He inquired as to the attraction in Morgan Hill that would encourage individuals to stay in Morgan Hill?

Mr. Dworkin stated that the City has the soccer complex that fills hotel rooms. He felt that Morgan Hill has a better base than the City of San Jose. He felt that the residents of Morgan Hill need to be educated on what there is in Morgan Hill and package it. He felt that bus tours can be taken from Morgan Hill to surrounding attractions as it is central to San Francisco and Monterey. The City itself does not have a draw other than its location. He did not know what can be done to address this. He said that the aquatics center and a baseball park would help address the issue of encouraging others to stay in Morgan Hill. He said youth sports are part of the equation as parents will spend money on their children. He felt that there were many avenues that are new that can be addressed and that it would take a subcommittee to hire the marketing professional.

Scott Schilling noted that it was indicated that the housing market was decent. However, the commercial and hotel market is the opposite of the current housing market. He stated that the marketing efforts by the Chamber can have a significant impact on TOT revenues and other revenues that eventually come to the City due to their efforts. He said that the Chamber is frequently one of the first contacts he makes, as a developer, when he looks at other areas. He looks to the Chamber for numbers, what is taking place in a town, what kind of events they hold, and services offered. He felt that the Chamber plays a critical role with a new perspective business that want to come into town. He said that the Chamber has the ability to raise private sector funds for marketing efforts which cannot often be done through the City unless TOT revenues can be used for marketing efforts. He said that there are some significant marketing efforts that can be put together by the Chamber and local hotel industry as there are a lot of things that the area has to offer such as Bonfonte Gardens and the Coyote golf course that would help fill hotel rooms and bring individuals into the city. He stated this support of the Chamber's marketing plan as it can have a significant impact on bringing in new business, creating interest in the community, filling hotel rooms, and restaurants.

Bill Weber, member of the Economic Development Committee, speaking for himself, felt that the issue is that of becoming proactive, and not reactive. He felt that the Chamber is being proactive in recommending that it move forward, in a partnership with the City, with its marketing plan of making Morgan Hill the place to be.

No further comments were offered.

Council/Agency Tate stated that he agreed that the Council requested, at their retreat, that staff and the Council work with the Chamber of Commerce to come up with a mutually agreeable and supportable proposal, noting that he acted as the Council's liaison to this effort. He said that he spent five long months in meetings trying to help do so. He indicated that he is a member of the Chamber of Commerce and that an important point to keep in mind is that the Council represents the citizens

of the community. He said that the strong advocates of the Chamber are the individuals who help the City the most and are willing to come forward to help the City in this effort. He stated that he did not have a problem with the contents of the staff report as the Council needs to work through all the issues raised by staff. He said that he was disappointed that the City is not working in sync the individuals putting together an agreeable proposal that can be carried forward. He felt that the City needs to get to the point where it has an agreeable partnership to move forward. He stated that he was leaning toward the approach that the Chamber has suggested. He said that a couple of weeks ago, when this was presented to the Council, he was leery about making a long term commitment because the Council has to gage the proposal as it goes along. He is skeptical about approving additional staff for a separate tourism program in the second year. However, he felt that these were elements that the Council could work through and that it would not take long to discuss the economic development philosophy, as a Council. He stated that he did not have a problem with doing what staff is recommending but that he was disappointed that it was not completed and that individuals were not heading in the same direction.

Mayor/Chairman Kennedy stated that as he read the staff report and revisited the Chamber's report, he felt that the City needs to be proactive. When the General Plan was put together, an economic study was prepared, noting that several of the Council members were part of the process of putting together the General Plan. Factual hard numbers were identified that need to be dealt with. He noted that the Chamber is asking for a five-year budget that averages \$90,000 per year for a total of \$585,000+. The Chamber is asking for a \$1 million over this amount and felt that this was a significant commitment to make. He was not comfortable making a commitment to provide an additional \$500,000 to the Chamber this evening as he did not believe that there was sufficient factual data to show that the City is heading in the right direction. He liked the idea of expanding the tourism business, but he did not know if this was based on emotion or whether there are significant dollars that can be captured. He stated that he would like to receive additional information before making the \$500,000 commitment, perhaps using data already gathered that could make a financial case for what is being requested. He wanted to know which area would have the greatest bang for the dollar and felt that this is a piece of information that is missing. He recommended that additional time be given toward answering these questions. He stated that he wanted to have enough factual information before making a \$500,000 decision.

Council/Agency Member Sellers inquired whether it was a comfort level of \$500,000+ over five years that Mayor Kennedy was not comfortable with or whether he felt that there was not enough information to see the benefit of different approaches?

Mayor/Chairman Kennedy noted that it was stated by one of the speakers that it was important that the person be offered a long term commitment toward economic development. Even though there are annual re authorization requests, he said that this was not something that he would want to start off and then two years later state that the program is not working, only to lay off the individual. He said that he would prefer to be more cautious going into the process. He did not believe there were

specific quantifiable goals/results that can be achieved identified.

Council/Agency Member Sellers noted that Gilroy has a model that in some way parallels what is being addressed. He felt that everyone involved in the process has to be clear about the economic development goals. He stated that when he first came onto the Council, money was given to Specialized Bicycles to make sure that they stayed in town. He supported this effort even though it was controversial at the time. However, it was the right thing to do because of the benefit to the community in terms of what Specialized brought/meant to the community and that it was not just about the money. He said that the Council needs to identify what businesses should be brought into the city. He said that he was uncomfortable with the economic side of things. He said that there were two components to the proposal and that he wanted to make sure that he has both components. He stated that he understood the unique role that the Chamber can play as well and felt that the City needs to find a balance. He stated that he was enthusiastic about the tourism part of the proposal because it is not a component that is being done at this time nor is it something that could be developed on the public sector side effectively for a variety of reasons. He felt that there were significant merits on trying to proceed with the Chamber's proposal with clear understanding. He noted that the staff report outlined quantitative criteria on the tourism side. He recommended that the City require quantifiable measures so that a year from now, significant progress can be identified. He felt that progress needs to be shown against what the economy is doing and that the Chamber's proposal is an added value. He felt that there was a lot of merit to the proposal and that he was anxious about delaying it too long. He recommended that the Council discuss the proposal further to see if it can be refined.

Mayor/Chairman Kennedy referred to page 16 of the Chamber's proposal that identifies a small number of measurable goals. He felt that is a part of the proposal that needs to be developed further such as establishing baseline data and performing benchmarks with other cities. He further recommended that the City look at successes and failures to see what worked and what hasn't worked. He stated that a concern that he had with the staff report was that it focused heavily on the weaknesses. He felt that the City needs to be building on its successes, noting that the City and the Chamber have been successful but that there is little talk on how you build on the successes.

Mayor Pro Tempore/Agency Member Carr indicated that he participated in some of the meetings between the City and the Chamber but that it was Council/Agency Member Tate who was the driving force/liaison between the Council and the Chamber on this project. He referred to the third recommendation in the staff report that addresses a clear focus on the economic development strategy. He agreed with staff that the City is close in focusing on an economic development strategy. He said that the City is going through an expensive effort to conduct a Downtown Plan that he believes is part of economic development. He noted that the City has an annual contract in place with the Chamber that the Council will be reviewing soon. He inquired how this contract plays into economic development? He noted that this evening, the Council conducted a workshop on the update of the zoning ordinance and indicated that a question was raised whether the zoning

ordinance was authored in a way that makes the City less competitive. Also, in this evening's agenda packet was the business assistance guidelines that were put together in 1999, in a different economy and a different day.

Mayor Pro Tempore/Agency Member Carr noted that the City is a different Morgan Hill today. He felt that there were a lot of steps that need to take place before deciding on an economic development strategy. He has a lot of questions regarding retention versus attraction. He inquired whether the City is talking about a strategy in today's economy that helps retain companies that are located in the City as layoffs are taking place throughout the valley or whether the City is talking about a strategy that attracts businesses regardless of the retention. If this is the case, he asked what businesses should be attracted? He noted that the Council established a goal for an auto district and that the City conducted specific marketing based on an auto district. He said that the Council received phone calls regarding the auto district. The Council needs to know the things that businesses seek when they look at relocating. He felt that the positive things that Morgan Hill has in place needs to be marketed and focused on rather than having a general marketing plan. He felt that before the City commences a marketing plan, the Council needs to get a better idea of what the City/community wants and needs. He felt that there are a lot of things the Council needs to work on before allocating money toward any of the plans. He appreciated staff trying to work toward a partnership with the Chamber in order to leverage dollars in the best way. However, he was not sure that the City was ready to leverage these dollars. He noted that the Council has a \$90,000 contract with the Chamber today to accomplish certain things that need to be evaluated. He felt that the Council needs to take a look at this contract. He noted that \$130,000 has been budgeted to start a new mainstream downtown program. He inquired whether this was a responsibility that the Council can take out of the contract from the Chamber so that the \$90,000 can go further toward economic development and marketing? He felt that the City has spent a lot of money in the last budget on these types of things and felt that the Council needs to evaluate what these dollars have done before taking a look at spending any more dollars on any of these projects.

Council Member/Vice-chairwoman Chang echoed some of the points made regarding what is the strategy for economic development. She noted that individuals have stated that there is an urgency in performing economic development. If the City can increase its budget from \$15 million last year to \$16.5 million and achieve a balance budget, she felt that the City was doing well. She did not consider the City being in an economic dire situation. She acknowledged that the City does have a high vacancy rate in the business park, however, she felt that this is man made. She said that the owner of the business park built it and did not anticipate the downturn of this particular market. However, she was excited about the plan. In looking at Gilroy, she sees them attracting one store after another such as Barnes & Nobel, Target, Ross, etc. She was worried about the City's future and whether some of these stores would remain in the community. She felt that the City should have something in place to make sure that the City remains sound. She said that Gilroy is clear about the businesses they want to attract. They want the big box market and big sales tax dollars. She indicated that she was one of the individuals who had a problem with an auto dealership and that she

still does. She would like the Council to study the direction and the strategy of where the City is going. She said that she would agree to volunteer her time to work with whomever the Mayor designates to work on the economic development strategy. She felt that both the Chamber and the City are good organizations and felt that the City and the Chamber should be able to work together to come up with an excellent plan; one that everyone is comfortable moving forward with. She recommended that action be deferred this evening and that the Council request staff work with the Chamber's president to work toward a plan that everyone feels comfortable with. She said that it was hard for her to spend a large amount of money on a polarized situation. She stated her support of moving forward with some direction from the Council for both groups to work together so that she can approve the economic development strategy.

Mayor/Chairman Kennedy suggested that a workshop be held between the Council and the Chamber Board to air out the issues and spend more time addressing these issues. He felt that the Council also needs to have a clear understanding of what it would like to see, noting that the Council does not have a consensus on where it wants to go.

Council/Agency Member Tate stated that Mayor/Chairman Kennedy characterized this action as making a \$500,000 decision. He noted that there has been discussion this evening about long term commitments. He felt that this would be an annual commitment and that the agreement would be evaluated at the end of each year. He felt that the marketing plan would be a positive thing. He inquired if it would be the second year that the separate tourism staff member would be hired? He felt that questions can be evaluated as the process moves along, especially if measurable goals are established up front. He agreed with the comments as stated by Mayor Pro Tempore/Agency Member Carr and what staff has suggested in terms that the Council does not have on paper the strategy for economic development. However, he disagreed that this was a long term project that would take long to accomplish. He did not object to researching the other issues raised before moving forward.

Mayor/Chairman Kennedy noted that the Chamber is requesting a five-year commitment in order to attract a marketing staff member and give them some sense of assurance that their job would be secured.

Council Member Tate stated that he would not support a five-year commitment.

Council/Agency Member Sellers felt that there was a difference between the plan and how you go about the commitment. He said that the Chamber has presented a five-year plan. The Council could state that the plan is sound and that it agrees to start with year one. The Council can review the plan in the second year to determine if the plan still makes sense and is sound. One of the most important things he tries to do, as a Council Member, is to know when not to get involved. He wanted to make sure that the Council does not feel that they are the sole arbitrators of what good economic development policies are for the community because he does not believe that the Council is. He felt



that the City has tremendous resources and that every council member is among those resources. The City Council each has strong feelings about economic development with input from the community. He felt that the Council cares enough about Morgan Hill to understand where it wants the city to go. He noted that Mayor Kennedy has suggested a workshop format or that the Council assign two council members to work with staff and the Chamber. He wanted to make sure that the Chamber is a primary player. He felt that the City is close in putting a marketing plan together and that the remaining elements are the quantifiable objectives and specifics about the goals. He recommended that the Council set a time line as to when it would like staff and the Chamber to identify all the specifics so that the individuals involved know what they have to do.

Mayor/Chairman Kennedy noted that the City Manager/Executive Director suggests the Council appoint a subcommittee to work with the Chamber to address some of the issues raised this evening, including the staff issues listed in the report, and report back to the Council with a recommendation. He recommended that a Council subcommittee evaluate the entire proposal by the Chamber as well as staff's comments on the proposal, including comments made this evening. The committee is to return with a recommendation to the Council.

Council/Agency Member Tate asked how this would incorporate setting the Council's economic strategy?

Mayor/Chairman Kennedy felt that the Council needs to discuss whether it is on the same page on its goals. He suggested that focus on economic development be scheduled on July 31, 2002.

Council/Agency Member Tate suggested a workshop the Chamber of Commerce be scheduled on July 31.

Council Member/Vice-chairwoman Change questioned whether one workshop would be enough to complete the process, noting that a set of goals would need to be established and priorities identified.

Mr. Kennett referred the Council to page 16, the measurable goals page of the Chamber's marketing plan, and page 12, return on investment of the staff report. He stated that one of the things that the Chamber agonized over, in developing this plan, was measurable goals. He did not believe that the Chamber did well on this. Yet, in a few days, some of the answers sought were turned over to the Chamber working closely with staff. He felt that the Economic Development Committee (EDC) and staff can work well. He referred the Council to page 28 of the marketing plan relating to the Director of Marketing Communications. He stated that part of the proposal of hiring and directing this individual, philosophically, is proposed to be a part of an EDC executive board made up of two council members, two city staff members, president of the EDC as well as the Chamber Executive Director. He proposed that the Council continue with its idea of a workshop. In the mean time, the EDC can start the process of further defining the direction of economic development for the City. He further recommended that the Council/Agency use a 60-day time frame to bring a plan back that

would be approved by staff, the Chamber and the Council.

In response to Council Member/Vice-chairman Chang's inquiry, Mayor/Chairman Kennedy felt that 60-days was sufficient time for the EDC to return to the Council with a proposal.

Council/Agency Member Sellers felt that a six-member Committee would formulate the time frame. In his four years on the Council, he felt that the Council did things well and some things not as well. He did not want the Council to wallow in the minutia and get over its head. He felt that the Council does best when it looks at the overall picture and tries to set a broad direction. He felt that the Council has done a good job about giving a broad economic development picture over the past years. He felt that the Council tends to have a consensus on the major economic development issues that come before it, as a rule. He recommended that the committee go off and try to identify these based on what the Council and the community has come to a consensus upon over the past few years. The Council can review the proposal and identify things that were missed and identify the emphasis versus having the Council trying to come up with the entire list as this would bog down the process. The Committee can return to the Council and present their collective list and outline based on the Council's comments on economic development priorities. He felt that this process could be accomplished in 60-days.

Council Member/Vice-chairman Chang felt that the Council needs a forum to discuss the overall economic goals.

Mayor Pro Tempore/Agency Member Carr said that he was having trouble asking staff to go off and develop a plan when they do not know what the Council wants. He agreed that the Council should not get into the minutia and felt that the Council needs to stay at the policy level. However, he did not know what the economic development strategy is for the City, noting that the Council has not addressed economic development. He stated that when this issue was first addressed, he attended workshops sponsored by the Chamber of Commerce. He was hoping that the Council would be getting out of the process that was started last fall when the economy first took a dive. Staff recognized this fact and came to the Council with a plan on how to reduce expenses in order to make the budget. He was hoping that the Council would be receiving suggestions on what the Council can be doing, as a city, in aiding economic development from these work sessions. This could be accomplished through changes in the zoning ordinance, providing different incentives, or simplifying the permit process. He noted that the Chamber took the direction of putting together this marketing plan. However, this was not what he thought the Council would get out of this process. He did not believe that the Council has given direction on what needs to take place. He stated that he has trouble asking staff to go do something without any direction on what they out to do.

Mayor/Chairman Kennedy recommended that the Council establish its goals and policies on July 31 and that staff be directed to return at that time with some options for Council consideration.

Council Member/Vice-chairwoman Chang noted that the City Manager would not be in town on July 31 and inquired whether there was an alternative meeting date? She suggested that the workshop be scheduled for August 21.

Council/Agency Member Tate recommended that in the meantime, the Council commit to filling out a questionnaire and getting its thoughts together.

**Action:**      *On a motion by Council/Agency Member Sellers and seconded by Council Member/Vice-chairwoman Chang, the City Council/Redevelopment Agency unanimously (5-0), **Directed** staff to schedule a workshop on August 21 on establishing economic development and tourism, using the existing plan as the framework under which the Economic Development Committee to establish a proposal.*

Council Member/Vice-chairwoman Chang stated that the Council does not need to include the tourism portion because the General Plan identifies three goals for economic development, noting that goal 3 is tourism.

Mayor/Chairman Kennedy stated that he would like to have what has already been approved by the City Council as a starting point. He said that with the information received thus far, the Council and the committee have a good packet of information to work from.

## ***City Council Action***

### **PUBLIC HEARINGS: (Continued)**

#### **18. ADJUSTMENTS TO DEVELOPMENT IMPACT FEES - Ordinance No. 1570, New Series**

City Attorney Leichter indicated that agenda items 18, 19 and 20 deal with development impact fees, user fees/service charges, and recreation division fees. She said that all three items are amendments to ordinances which are necessitated by the updates to the fee schedules that have been proposed. However, tonight's action does not require the Council to contemplate or approve any of the fee adjustments that have been discussed as they will be discussed on July 17. She indicated that the procedural reasons for bringing these ordinances to the Council this week are for the introduction of the ordinances so that they can be adopted should the Council chose to adopt the resolutions governing the fee adjustments next week. In response to Council Member Tate's question, she indicated that the only changes being made to the ordinance is text amendments that would establish the type of fees and give the Council the authority to adopt specific fees at a later date.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1570, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1570, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.010(1)(F), 3.56.010(1)(J), 3.56.010(1)(M), 3.56.050, AND 3.56.160(1)(A) OF CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

#### **19. ADJUSTMENTS TO USER FEES, SERVICE CHARGES, AND MISCELLANEOUS UTILITIES FEES - Ordinance No. 1569, New Series**

City Attorney Leichter presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was

closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1569, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1569, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 3.50.050(1)(C) (Schedule of fees and service charges) OF CHAPTER 3.50 (Fee and Service Charge Revenue/Cost Comparison System) OF TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING USER FEES AND SERVICE CHARGES by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

**20.     CITY RECREATION FACILITY RESERVATION PROCEDURES AND USER FEE**  
***- Ordinance 1571, New Series***

City Attorney Leichter presented the staff report.

Council Member Chang noted that it is being stated in the ordinance that the City is ". . . ensuring maximum cost recovery." She inquired whether the City was charging non profit sports organizations in such a manner that the City is receiving 100% cost recovery?

Recreation Manager Spier responded that at a rate of \$2 per hour, not taken into account the administrative processing fee, the charge is minimal cost recovery. She stated that she would have to conduct an analysis to identify full cost recovery. For commercial groups, staff was looking at \$35/hour as a comparison for rates being proposed.

Mayor Kennedy stated that it may not be appropriate to talk about ensuring maximum cost recovery as the City is not achieving full cost recovery. He felt that it would depend on whether the Council wants to focus on providing this service to the community's youth or be concerned about full cost recovery. He noted that at the last Council meeting, it was felt that the cost was a minimum amount, but yet the cost would be a hard hit on the teams such that it would be hardly worth making an issue of the fee.

Council Member Sellers recommended changing the word "maximum" to "appropriate."

Council Member Chang recommended that a one time flat fee be charged for organized sports to use the fields versus charging the \$2 per hour user fees as it would become too complicated.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1571, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1571, New Series, as amended, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.54 (Recreation Fees) OF TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING FEES FOR RECREATION SERVICES, INCLUDING CLASSES, FACILITIES AND ADMINISTRATIVE PROCESSING FEES, as amended (replace the word w"maximum" with "appropriate") by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **21.     SANTA CLARA COUNTY POLLUTION PREVENTION PROGRAM**

Council Services and Records Manager Torrez presented the staff report.

Council Members indicated that their schedules could not accommodate appointment to this committee.

Mayor Pro Tempore Carr indicated that he would inform Gillian Moran, Executive Director of the Cities Association, that he would be stepping down and that she could advertise this position.

Mayor Kennedy recommended that the City of Gilroy be contacted to let them know of the vacancy.

Council Services and Records Manager Torrez indicated that she would contact the City Clerk of the City of Gilroy to see if she can schedule this item for their Council consideration.

**Action:**        **No Action Taken.**

#### **22.     HOUSING TYPE DISTRIBUTION AND TERM FOR 2002-2003 MEASURE "P" COMPETITION (FY 2004-2005 AND A POTION OF THE FY 2005-2006 BUILDING**

**ALLOTMENT) - Resolution No. 5594**

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the floor to public comments. No comments being offered, the public hearing was closed.

Council Member Sellers said that he would like to place an asterisk on the second year competition because the City Council would be appointing a Measure P committee next week to review Measure P. The Measure P Committee would be returning to the Council with a ballot measure at the time the Planning Commission would be awarding building allotments. Depending on what gets approved by the voters, this would be the point of starting the changes.

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5594, Approving the Total Building Allotment and Distribution and Authorizing Measure P Competitions to be Conducted During Fiscal Year 2002-2003 for the Balance of the Fiscal Year 2004-2005 Building Allotment and a Portion of the Fiscal Year 2005-2006 Building Allotment.*

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURN TO CLOSED SESSION**

City Attorney/Agency Counsel Leichter indicated that the closed session items were those that were continued prior to the regular agenda.

**Action:**        *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the City Council unanimously (5-0) **agreed to extend** the meeting beyond 11:00 p.m.*

Mayor/Chair Kennedy adjourned the meeting to closed session at 10:55 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:12 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 11:13 p.m.

**MINUTES RECORDED AND PREPARED BY**

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**IRMA TORREZ, City Clerk/Agency Secretary**



**CITY OF MORGAN HILL  
JOINT SPECIAL CITY COUNCIL AND  
DOWNTOWN TASK FORCE MEETING  
MINUTES - JULY 13, 2002**

**CALL TO ORDER**

Mayor Pro Tempore Carr called the meeting to order at 5:37 p.m.

**ROLL CALL ATTENDANCE**

**City Council**

Present: Council Members Sellers and Tate  
Absent: Council Members Carr, Chang, and Mayor Kennedy

**Downtown Task Force**

Present: Task Force Members Sellers, Tate, Lyle, Acevedo, Burch, Danielson, Engles, Garcia, Gonzalez-Escoto, Jensen, Jones, Miles, Minnich, Murphy, and Richter  
Absent: Task Force Members Kennett, Oliver and Turner

**DECLARATION OF POSTING OF AGENDA**

The meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

**CITY COUNCIL MEETING CANCELLED**

The City Council meeting was canceled due to the lack of a quorum. The Downtown Task Force continued with its business meeting.

**MINUTES PREPARED BY**

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**IRMA TORREZ, City Clerk**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: July 31, 2002***

**Agenda Item # 5**

**Prepared By:**

**Asst. to the City Mgr.**

**Submitted By:**

**City Manager**

**RESPONSE TO GRAND JURY'S FINAL REPORT,  
EXAMINATION OF AUDITS AND FINANCIAL REPORTS**

**RECOMMENDED ACTION:**

1. **Authorize Mayor Kennedy** to sign the attached letter responding to the 2001-02 Santa Clara County Civil Grand Jury's Final Report, Examination of Audits and Financial Reports.

**EXECUTIVE SUMMARY:**

On June 24, 2002 the Mayor and City Council received the Final Report, Examination of Audits and Financial Reports, from the 2001-2002 Santa Clara County Civil Grand Jury. This report listed the findings and recommendations of the Grand Jury following their review of audits, financial reports, financial statements and management letters of 32 cities and government agencies within Santa Clara County. Two recommendations made by the Grand Jury apply to the City of Morgan Hill:

1. Implement a program of continuing management audits.
2. Modify and expand accounting procedures to encompass the requirements of GASB No. 34.

The attached letter provides a response to the Grand Jury for the Council's consideration. It provides information about the management audits currently underway in the City of Morgan Hill, as well as our practice of conducting management audits for high-priority activities. The letter also addresses the City's efforts to meet the accounting requirements set forth in GASB No. 34. Meeting these requirements has been a subject of both the 2001-02 and 2002-03 workplans, and staff will be submitting the City of Morgan Hill's 2002-03 financial statements in the format required by GASB No. 34.

**FISCAL IMPACT:**

No budget adjustment required.



MAYOR DENNIS KENNEDY

17555 Peak Avenue  
Morgan Hill, CA  
95037-4128

August 1, 2002

Bruce E. Capron, Foreperson  
Grand Jury of Santa Clara County  
191 North First Street  
San Jose CA 95113

Dear Mr. Capron,

The City Council of the City of Morgan Hill has received and reviewed the 2001-2002 Santa Clara County Civil Grand Jury's Final Report, Examination of Audits and Financial Reports. We would like to acknowledge the Grand Jury's thoroughness and care in its examination of the audits, financial reports, financial statements and management letters of 32 cities and government agencies within Santa Clara County.

Two recommendations in the Final Report apply to the City of Morgan Hill:

1. Implement a program of continuing management audits.
2. Modify and expand accounting procedures to encompass the requirements of GASB No. 34.

In response to Recommendation 1, we note that the City of Morgan Hill's financial statements are audited annually, and we have conducted formal reviews of other programs and functions on an as-needed basis. For example, we are currently conducting management studies of our development processing services and our fleet management practices. Such studies, especially when conducted by outside organizations, represent a significant investment in terms of staff time and financial resources. As a result, management studies are focused on the highest priority issues. In addition, staff are frequently involved in less formal evaluations of City programs and activities, and regularly consider the efficiency and effectiveness of our operations. In particular, we have recently implemented performance measures for all departments, and expect that the information gleaned from the measurement process will further our continuous improvement efforts.

Regarding Recommendation 2, the City is well aware of the requirements of GASB No. 34 and has been preparing to change our accounting procedures accordingly. Our Finance Department has been working closely with other departments to ensure our ability to meet the requirements set forth in GASB No. 34. We fully expect our 2002-2003 financial statements will be prepared in the GASB 34 format.

Should you have further questions, I invite you to contact our City Manager, Ed Tewes, at (408) 779-7271.

Sincerely,

Dennis Kennedy  
Mayor, City of Morgan Hill



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**Agenda Item # 6**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

**APPROVE PURCHASE OF A MINI-DUMP TRASH HAULER TRAILER**

**RECOMMENDED ACTION(S):**

1. Approve carry-over of funds budgeted for this purchase in FY01-02 to 02-03 fiscal year budget.
2. Approve the purchase of \$5,421.27 for a mini-dump Carson Trailer, Model DT10.

**EXECUTIVE SUMMARY:** Funds were budgeted in FY01-02 for the purchase of a trailer to mount the spray rig. The trailer will have three functions: 1) to carry the spray rig for the mobile application of herbicide, 2) as a utility trailer, and 3) for the hauling and dumping of debris.

Bid packages were sent to four requesting vendors and advertised in the newspaper. A bid opening for this equipment purchase was held on Tuesday, July 2, 2002 and the results are as follows:

•	101 Equipment Sales	\$4,551.50
•	101 Equipment Sales	\$5,255.13
•	South Valley Trailers	\$5,421.27
•	Jacobsen Trailer, Inc.	\$5,948.00
•	Action Trailer Sales, Inc.	\$6,073.33

The two lowest bids, submitted by 101 Equipment Sales, did not meet specifications. The third lowest, submitted by South Valley Trailers, not only met but exceeded the specifications. Staff recommends the purchase from South Valley Trailers for \$5,421.27.

**FISCAL IMPACT:** The process overlapped FY01-02 and FY02-03. It is requested that the funds budgeted in FY01-02 be carried over for this purchase. Funding for this purchase is in the Parks Maintenance Budget.



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

***FINAL MAP ACCEPTANCE FOR QUAIL CREEK PH. I***  
***(TRACT 9427)***

**RECOMMENDED ACTION(S):**

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:**

Tract 9447 is a 20 lot subdivision located on the northeast corner of the Watsonville Road and Sunnyside Avenue/ Santa Teresa Boulevard intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on January 22, 2002.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

**FISCAL IMPACT:**

Development review for this project is from development processing fees.

**Agenda Item # 7**

**Prepared By:**

**Senior Civil Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL  
17555 PEAK AVENUE  
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO GOVERNMENT  
CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

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## **SUBDIVISION IMPROVEMENT AGREEMENT**

(SUBDIVIDER - SOUTH VALLEY DEVELOPERS, INC.)

(SUBDIVISION NAME - TRACT NO. 9427)

THIS AGREEMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 200\_, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and South Valley Developers, Inc., a California corporation ("SUBDIVIDER").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Subdivision Ordinance - Title 17.
2. SUBDIVIDER has filed a Tentative Subdivision Map and supporting documents for Tract 9426 , the subdivision known as Quail Creek Phase I.
3. CITY desires as a condition of approval of the Final Tract Map, that certain improvements be installed by SUBDIVIDER as shown on the fully executed Subdivision Improvement Plans entitled "Improvement Plans for Quail Creek Phase I".
4. SUBDIVIDER has been unable to complete, prior to filing of the Final Map, all of the improvements required by CITY to the satisfaction of the City Engineer.
5. SUBDIVIDER is required by the terms of the Morgan Hill Municipal Code, to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
6. To assure CITY that SUBDIVIDER will complete all the work required for the SUBDIVISION, the parties have entered into this Agreement.

## AGREEMENT

### THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover a period of eighteen (18) months from the date of approval of Final Map. Work shall be completed within eighteen (18) months of the date of approval by the City Council, unless this time is extended pursuant to the terms of this Agreement.
2. **Improvements.** SUBDIVIDER agrees to follow the plans and documents filed with CITY in conjunction with the SUBDIVISION, all of which are incorporated herein by reference. These items will be completed, constructed and installed at SUBDIVIDER's sole expense unless agreed to otherwise by City.
3. **Bond List.** To secure the performance of each improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each improvement required, SUBDIVIDER shall provide CITY, prior to the execution of this Agreement by CITY, with the following bonds pursuant to Bond requirements denoted in Paragraph 7:

<u>Type of Bond</u>	<u>Amount</u>
Performance	\$1,014,272
Labor & Material	\$1,014,272
Warranty	\$ 507,136

Note: If Set Aside Letter is utilized for bonding purposes, the Set Aside Letter amount shall be one hundred seventy (170%) percent of the aforementioned Performance Bond amount. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Set Aside amount shall be \$1,724,262.

4. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY rejects all lands, rights-of-way, and easements offered for dedication on the final map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by CITY in its sole discretion at any later date without further notice to SUBDIVIDER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the improvements called for in this Agreement.
5. **Improvements: Time Limits.** SUBDIVIDER agrees to cause all improvements to be made and constructed in the Subdivision and to comply with all requirements of the Subdivision Map Act, according to the improvement plans for the Subdivision approved by the City Engineer and including any changes or alteration in the work ("the Work") required by the City Engineer.

The Work shall be completed utilizing CITY standards and specifications. SUBDIVIDER agrees to complete the Work on or before eighteen (18) months from the date of this Agreement; however, the City Manager of CITY is hereby authorized to extend the time within which the Work shall be completed for additional periods not to exceed six (6) months each, or a maximum of twelve (12) months, at his sole discretion, if he is of the opinion that granting the extension will not be detrimental to the public welfare. No extension shall be made except upon the basis of a written application made by SUBDIVIDER stating fully the grounds of the application and the facts relied upon for an extension. In the event that SUBDIVIDER shall fail to complete the Work within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Subdivision and complete the Work and recover the full cost and expense of construction from SUBDIVIDER, SUBDIVIDER'S successors and assigns, Subdivider's Performance/Labor & Material Bonds associated with this subdivision, or from the then owner of the Subdivision and/or place a lien upon the Subdivision for the cost and expense. Any and all City costs shall include administrative and attorney costs.

6. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Work is to be constructed or installed on land not within the Subdivision or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work has been obtained and paid for by SUBDIVIDER.

7. **Bond Requirements.** SUBDIVIDER shall file with this Agreement three bonds. Two of the bonds shall each be in the amount of 100% of the total estimated cost of the Work as determined by the City Engineer. One improvement security shall secure faithful performance of this Agreement as required by Government Code Section 66499.3(a) for performance. The second security is required by Government Code Section 66499.3(b) for labor and materials. An additional guarantee and warranty security of fifty (50%) percent of the City Engineer's estimated cost of the Work to guarantee and warranty the Work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Government Code Section 66499(a)(5). Any bonds submitted under this Agreement shall be executed by a surety company authorized to transact a surety business in the State of California. All required securities shall be in a form approved by the City Attorney. Submittal of the Performance/Labor & Material Bonds is a requirement prior to the City Council's consideration of the Subdivision Final Map. Submittal of the Warranty Bond is a requirement prior to the City Council's consideration of acceptance of the public improvements.

8. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time and may be released only upon the written approval of the City Engineer.

9. **Duty to Warn.** SUBDIVIDER shall give adequate warning to the public of each and every dangerous condition which may exist in the Work, and will take all reasonable actions to protect the public from any dangerous condition.

10. **Warranty.** SUBDIVIDER guarantees and warrants the Work required by this Agreement and agrees to remedy any defects in the improvements or the Work arising from faulty or defective materials or construction occurring within twelve (12) months after its acceptance. Following notice SUBDIVIDER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or



unsatisfactory portion of Work. CITY may, at its sole option, perform the repair or replacement itself if SUBDIVIDER has failed to commence repair within twenty (20) days after CITY has mailed written notice to SUBDIVIDER. In such event, SUBDIVIDER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Subdivision. CITY may proceed immediately to make repairs should an emergency arise.

11. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against SUBDIVIDER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and SUBDIVIDER pursuant to Government Code Section 66499.4.

12. **Certificate of Occupancy.** SUBDIVIDER understands that the City will expect completion, to the satisfaction of the City, of all public improvements as well as private utility improvements prior to City Approval of a Certificate of Occupancy for a building on any lot in the Subdivision. The improvements shall include activation of all public utilities (water, sewer, storm drain), activation of all private utilities (electric, gas, phone) except for cable, street lights turn-on request filed with P G & E, full street improvements (curb-gutter and paving with final lift) from existing public street to building under consideration for Certificate of Occupancy. Certificate will not be issued until all fees payable to City under this Agreement have been paid. Subdivider, furthermore, agrees to so inform successor in lot interest of obligations assumed pursuant to this paragraph should lot be transferred to another party prior to City acceptance of subdivision public improvements.

13. **Final Subdivision Public Report.** Where applicable, SUBDIVIDER hereby agrees to furnish the City Attorney of Morgan Hill with a copy of the Final Subdivision Public Report issued by the Division of Real Estate of the State of California on the proposed subdivision. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

14. **Public Works Fee Schedule.** SUBDIVIDER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments, and shall be in accordance with the Department of Public Works Fee Schedule.

A Total Fee Current Obligation of \$587,790 is required. This obligation consists of the sum of \$338,790 which shall be paid at the time of recording the final subdivision map and a Deferred Current Fee Obligation of \$249,000. The deferred obligation shall be prorated on an individual lot basis and paid to City prior to final inspection or occupancy of each and every residence. All Fees are estimated and may be increased by City subject to current resolutions and ordinances. Payment of the fee amounts currently due is a requirement at the time of City Council consideration of the Subdivision Final Map. These fees are subject to a minimum annual revision. SUBDIVIDER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of building permits.

All development fees shall be those in effect at the time of the issuance of the building permit for each lot.

This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

15. **Other Agreements Associated with This Subdivision Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ City "Streets" Reimbursement Agreement (City Ordinance 982)

SUBDIVIDER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby the SUBDIVIDER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by the CITY and/or others. SUBDIVIDER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then SUBDIVIDER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ City Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

16. **Insurance Requirements.**

16.1 **Commencement of Work.** SUBDIVIDER is required to obtain CITY approved insurance prior to consideration of Final Map acceptance by City Council. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California and shall name **by endorsement** CITY, its elected officials, officers, employees, agents and representatives, as an additional insured. All policies shall contain language to the effect that: (1) the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; (2) insurance shall be primary noncontributing and any other insurance carried by the CITY shall be excess over such insurance, and (3) policies shall provide that it shall not be cancelled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail. SUBDIVIDER shall furnish CITY with copies of all such policies or certificates promptly upon receipt. Submittal of the appropriate insurance is a requirement prior to the City Council's consideration of the Subdivision Final Map. It is the responsibility of SUBDIVIDER to verify that all agents, including general and sub-contractors working on the project, have the minimum insurance coverages required by CITY. Any work performed within the City's right-of-way requires an encroachment permit. Prior to acquiring a permit, the applicant will be required to furnish proof of insurance coverage.

16.2 **Workers Compensation Insurance.** SUBDIVIDER and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

16.3 **Insurance Amounts.** SUBDIVIDER shall maintain comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage.

16.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

17. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

18. **Non-Discrimination.** SUBDIVIDER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

19. **Independent Contractor.** It is agreed to that SUBDIVIDER shall act and be an independent contractor, and not an agent or employee of CITY.

20. **Compliance with Law.** SUBDIVIDER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

21. **Right to Inspect and Inspection Fees.** SUBDIVIDER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Work. SUBDIVIDER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

22. **Conflict of Interest and Reporting.** SUBDIVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

23. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of SUBDIVIDER is as follows:  
South Valley Developers, Inc.  
16060 Caputo Drive #160  
Morgan Hill, CA 95037

b. Address of CITY is as follows:

Public Works Director  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

With a copy to:

City Clerk  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

24. **SUBDIVIDER'S Representations.** This Agreement shall include SUBDIVIDER'S map, application or items submitted to the Planning Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

25. **Licenses, Permits and Fees.** SUBDIVIDER shall obtain a **City of Morgan Hill Business License**, all permits, and licenses as may be required by this Agreement.

26. **Familiarity with Work.** By executing this Agreement, SUBDIVIDER warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the Work and is aware of all conditions there; and (3) it understands the difficulties, and restrictions of the Work under this Agreement. Should SUBDIVIDER discover any conditions materially differing from those inherent in the Work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SUBDIVIDER'S risk, until written instructions are received from CITY.

27. **Time of Essence.** Time is of the essence in the performance of this Agreement.

28. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by SUBDIVIDER without prior written consent of CITY.

29. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

30. **Indemnification.** SUBDIVIDER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by SUBDIVIDER, SUBDIVIDER'S agents, officers, employees, subcontractors, or independent contractors hired by SUBDIVIDER. The only exception to SUBDIVIDER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SUBDIVIDER.

31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and SUBDIVIDER.

32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

34. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

35. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the final map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision.

36. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be

recorded.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

**CITY OF MORGAN HILL**

**"SUBDIVIDER"**

**South Valley Developers, Inc.**

By: \_\_\_\_\_  
J. Edward Tewes, City Manager

By: \_\_\_\_\_  
Scott Schilling, CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager

Date: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Helene Leichter, City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**FORM OF LABOR AND MATERIAL BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_

Premium: \_\_\_\_\_

NOTICE: TO WHOM IT MAY CONCERN: That we,  
\_\_\_\_\_, as PRINCIPAL, and  
\_\_\_\_\_, as Surety, are held and firmly bound unto  
the City of Morgan Hill, California, ("CITY") in the sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_), lawful money of the United States, for the payment of which we bind  
ourselves, our heirs, executors, administrators, and successors, jointly and severally.

That the Surety's office is located at \_\_\_\_\_,  
Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the  
California Insurance Agent's License No., address, and telephone number as follows:

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party  
to the transaction:

Name of non-resident agent: \_\_\_\_\_,

Non-resident agent's office address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

THE CONDITION OF THIS OBLIGATION FOR TRACT 9427 - QUAIL CREEK PHASE I  
PROJECT IS SUCH, that:

1. The Principal has agreed to complete the following improvements:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. If the Principal, its heirs, executors, administrators, successors, or assigns, or subcontractors,  
shall fail to pay for any materials, provisions, or provender, or other supplies or teams,  
implements, or machinery used in, upon, for, or about, the performance of the improvement,  
or for any work or labor thereon of any kind, or for amounts due under State law with respect  
to work or labor, the Surety or Sureties will pay the same in the amount not exceeding the  
sum specified in this bond; otherwise, the above obligation shall be void. In case suit is  
brought upon this bond, the Surety will pay reasonable attorneys' fees.

3. Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of work performed, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.
4. This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Civil Code 3181 et seq., so as to give a right of action to them or their assignees in any suit brought upon this bond.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in Fact

By: \_\_\_\_\_  
California Resident Agent

By: \_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Jim Ashcraft, City Engineer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Helene Leichter, City Attorney

By: \_\_\_\_\_  
Jack Dilles, Risk Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(Jurat on following page.)





**FORM OF PERFORMANCE BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_

Premium: \_\_\_\_\_

NOTICE: TO WHOM IT MAY CONCERN: That we,

\_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Morgan Hill, California, ("CITY") in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

That the Surety's office is located at \_\_\_\_\_, Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party to the transaction:

Name of non-resident agent: \_\_\_\_\_,

Non-resident agent's office address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

THE CONDITION OF THIS OBLIGATION FOR TRACT 9427 - QUAIL CREEK PHASE I PROJECT IS SUCH, that:

1. The Principal has agreed to complete the following improvements:

\_\_\_\_\_  
\_\_\_\_\_.

2. If the Principal shall well and truly perform, or cause to be performed, each and all of the requirements and obligations of the contract to be performed by the Principal, as set forth in the contract, then this bond shall be null and void; otherwise, it shall remain in full force and effect. In the event that suit is instituted to recover on this bond, the Surety will pay reasonable attorneys' fees and liquidated damages.

3. Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents or of work performed shall in all in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

By: \_\_\_\_\_  
California Resident Agent

By: \_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Jim Ashcraft, City Engineer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Helene Leichter, City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager

Date: \_\_\_\_\_

(Jurat on following page.)

[illegible]

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known to me to be the Attorney-in-Fact of the \_\_\_\_\_ (Corporation) of \_\_\_\_\_, \_\_\_\_\_, and acknowledged that it executed the attached bond to the \_\_\_\_\_ (City) \_\_\_\_\_ (State) City of Morgan Hill as such Attorney-in-Fact and as the free act and deed of the corporation, and that the bond was executed on behalf of the corporation by authority of its Board of Directors.

WITNESS my hand and official seal.

(Acknowledgment by Non-resident Agent  
as Attorney-in-Fact must be attached.)



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

***FINAL MAP ACCEPTANCE FOR COYOTE CREEK***  
***(TRACT 9396)***

**RECOMMENDED ACTION(S):**

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:**

Tract 9396 is a 15 lot subdivision located on the west side of Malaguerra Avenue between Silverwings Court and Sullivan Court (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on August 14, 2001.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

**FISCAL IMPACT:**

Development review for this project is from development processing fees.

**Agenda Item # 8**

**Prepared By:**

**Senior Civil Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL  
17555 PEAK AVENUE  
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO GOVERNMENT  
CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

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## **SUBDIVISION IMPROVEMENT AGREEMENT**

(SUBDIVIDER - 5M CORPORATION.)

(SUBDIVISION NAME - TRACT NO. 9396)

THIS AGREEMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 200\_, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and 5M Corporation, a California corporation ("SUBDIVIDER").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Subdivision Ordinance - Title 17.
2. SUBDIVIDER has filed a Tentative Subdivision Map and supporting documents for Tract 9396 , the subdivision known as Coyote Creek.
3. CITY desires as a condition of approval of the Final Tract Map, that certain improvements be installed by SUBDIVIDER as shown on the fully executed Subdivision Improvement Plans entitled "Improvement Plans for Coyote Creek".
4. SUBDIVIDER has been unable to complete, prior to filing of the Final Map, all of the improvements required by CITY to the satisfaction of the City Engineer.
5. SUBDIVIDER is required by the terms of the Morgan Hill Municipal Code, to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
6. To assure CITY that SUBDIVIDER will complete all the work required for the

SUBDIVISION, the parties have entered into this Agreement.

## **AGREEMENT**

### THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover a period of eighteen (18) months from the date of approval of Final Map. Work shall be completed within eighteen (18) months of the date of approval by the City Council, unless this time is extended pursuant to the terms of this Agreement.
2. **Improvements.** SUBDIVIDER agrees to follow the plans and documents filed with CITY in conjunction with the SUBDIVISION, all of which are incorporated herein by reference. These items will be completed, constructed and installed at SUBDIVIDER's sole expense unless agreed to otherwise by City.
3. **Bond List.** To secure the performance of each improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each improvement required, SUBDIVIDER shall provide CITY, prior to the execution of this Agreement by CITY, with the following bonds pursuant to Bond requirements denoted in Paragraph 7:

<u>Type of Bond</u>	<u>Amount</u>
Performance	\$ 645,549
Labor & Material	\$ 645,549
Warranty	\$ 322,774

Note: If Set Aside Letter is utilized for bonding purposes, the Set Aside Letter amount shall be one hundred seventy (170%) percent of the aforementioned Performance Bond amount. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Set Aside amount shall be \$1,097,433.

4. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY rejects all lands, rights-of-way, and easements offered for dedication on the final map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by CITY in its sole discretion at any later date without further notice to SUBDIVIDER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the improvements called for in this Agreement.

5. **Improvements: Time Limits.** SUBDIVIDER agrees to cause all improvements to be

made and constructed in the Subdivision and to comply with all requirements of the Subdivision Map Act, according to the improvement plans for the Subdivision approved by the City Engineer and including any changes or alteration in the work ("the Work") required by the City Engineer. The Work shall be completed utilizing CITY standards and specifications. SUBDIVIDER agrees to complete the Work on or before eighteen (18) months from the date of this Agreement; however, the City Manager of CITY is hereby authorized to extend the time within which the Work shall be completed for additional periods not to exceed six (6) months each, or a maximum of twelve (12) months, at his sole discretion, if he is of the opinion that granting the extension will not be detrimental to the public welfare. No extension shall be made except upon the basis of a written application made by SUBDIVIDER stating fully the grounds of the application and the facts relied upon for an extension. In the event that SUBDIVIDER shall fail to complete the Work within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Subdivision and complete the Work and recover the full cost and expense of construction from SUBDIVIDER, SUBDIVIDER'S successors and assigns, Subdivider's Performance/Labor & Material Bonds associated with this subdivision, or from the then owner of the Subdivision and/or place a lien upon the Subdivision for the cost and expense. Any and all City costs shall include administrative and attorney costs.

6. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Work is to be constructed or installed on land not within the Subdivision or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work has been obtained and paid for by SUBDIVIDER.

7. **Bond Requirements.** SUBDIVIDER shall file with this Agreement three bonds. Two of the bonds shall each be in the amount of 100% of the total estimated cost of the Work as determined by the City Engineer. One improvement security shall secure faithful performance of this Agreement as required by Government Code Section 66499.3(a) for performance. The second security is required by Government Code Section 66499.3(b) for labor and materials. An additional guarantee and warranty security of fifty (50%) percent of the City Engineer's estimated cost of the Work to guarantee and warranty the Work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Government Code Section 66499(a)(5). Any bonds submitted under this Agreement shall be executed by a surety company authorized to transact a surety business in the State of California. All required securities shall be in a form approved by the City Attorney. Submittal of the Performance/Labor & Material Bonds is a requirement prior to the City Council's consideration of the Subdivision Final Map. Submittal of the Warranty Bond is a requirement prior to the City Council's consideration of acceptance of the public improvements.

8. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time and may be released only upon the written approval of the City Engineer.

9. **Duty to Warn.** SUBDIVIDER shall give adequate warning to the public of each and every dangerous condition which may exist in the Work, and will take all reasonable actions to protect the public from any dangerous condition.

10. **Warranty.** SUBDIVIDER guarantees and warrants the Work required by this Agreement and agrees to remedy any defects in the improvements or the Work arising from faulty or defective materials or construction occurring within twelve (12) months after its acceptance. Following notice SUBDIVIDER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Work. CITY may, at its sole option, perform the repair or replacement itself if SUBDIVIDER has failed to commence repair within twenty (20) days after CITY has mailed written notice to SUBDIVIDER. In such event, SUBDIVIDER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Subdivision. CITY may proceed immediately to make repairs should an emergency arise.

11. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against SUBDIVIDER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and SUBDIVIDER pursuant to Government Code Section 66499.4.

12. **Certificate of Occupancy.** SUBDIVIDER understands that the City will expect completion, to the satisfaction of the City, of all public improvements as well as private utility improvements prior to City Approval of a Certificate of Occupancy for a building on any lot in the Subdivision. The improvements shall include activation of all public utilities (water, sewer, storm drain), activation of all private utilities (electric, gas, phone) except for cable, street lights turn-on request filed with P G & E, full street improvements (curb-gutter and paving with final lift) from existing public street to building under consideration for Certificate of Occupancy. Certificate will not be issued until all fees payable to City under this Agreement have been paid. Subdivider, furthermore, agrees to so inform successor in lot interest of obligations assumed pursuant to this paragraph should lot be transferred to another party prior to City acceptance of subdivision public improvements.

13. **Final Subdivision Public Report.** Where applicable, SUBDIVIDER hereby agrees to furnish the City Attorney of Morgan Hill with a copy of the Final Subdivision Public Report issued by the Division of Real Estate of the State of California on the proposed subdivision. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

14. **Public Works Fee Schedule.** SUBDIVIDER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments, and shall be in accordance with the Department of Public Works Fee Schedule.

A Total Fee Current Obligation of \$ to be determined is required. This obligation consists of the sum of \$\*\*\*\*\* which shall be paid at the time of recording the final subdivision map and a Deferred Current Fee Obligation of \$\*\*\*\*\*. The deferred obligation shall be prorated on an individual lot basis and paid to City prior to final inspection or occupancy of each and every residence. All Fees are estimated and may be increased by City subject to current resolutions and ordinances. Payment of the fee amounts currently due is a requirement at the time of City Council consideration of the Subdivision Final Map. These fees are subject to a minimum annual revision. SUBDIVIDER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of building permits.



All development fees shall be those in effect at the time of the issuance of the building permit for each lot.

This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

15. **Other Agreements Associated with This Subdivision Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ City "Streets" Reimbursement Agreement (City Ordinance 982)

SUBDIVIDER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby the SUBDIVIDER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by the CITY and/or others. SUBDIVIDER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then SUBDIVIDER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ City Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

16. **Insurance Requirements.**

16.1 **Commencement of Work.** SUBDIVIDER is required to obtain CITY approved insurance prior to consideration of Final Map acceptance by City Council. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California and shall name **by endorsement** CITY, its elected officials, officers, employees, agents and representatives, as an additional insured. All policies shall contain language to the effect that: (1) the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; (2) insurance shall be primary noncontributing and any other insurance carried by the CITY shall be excess over such insurance, and (3) policies shall provide that it shall not be cancelled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail. SUBDIVIDER shall furnish CITY with copies of all such policies or certificates promptly upon receipt. Submittal of the appropriate insurance is a requirement prior to the City Council's consideration of the Subdivision Final Map. It is the responsibility of SUBDIVIDER to verify that all agents, including general and sub-contractors working on the project, have the minimum insurance coverages required by CITY. Any work performed within the City's right-of-way requires an encroachment permit. Prior to acquiring a permit, the applicant will be required to furnish proof of insurance coverage.

16.2 **Workers Compensation Insurance.** SUBDIVIDER and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

16.3 **Insurance Amounts.** SUBDIVIDER shall maintain comprehensive, broad form,

general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage.

16.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

17. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

18. Non-Discrimination. SUBDIVIDER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

19. Independent Contractor. It is agreed to that SUBDIVIDER shall act and be an independent contractor, and not an agent or employee of CITY.

20. Compliance with Law. SUBDIVIDER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

21. Right to Inspect and Inspection Fees. SUBDIVIDER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Work. SUBDIVIDER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

22. Conflict of Interest and Reporting. SUBDIVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

23. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of SUBDIVIDER is as follows:  
5M Corporation  
519 Horning Street  
San Jose, CA 95112

b. Address of CITY is as follows:  
  
Public Works Director  
City of Morgan Hill  
17555 Peak Avenue

With a copy to:

City Clerk  
City of Morgan Hill  
17555 Peak Avenue

24. **SUBDIVIDER'S Representations.** This Agreement shall include SUBDIVIDER'S map, application or items submitted to the Planning Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

25. **Licenses, Permits and Fees.** SUBDIVIDER shall obtain a **City of Morgan Hill Business License**, all permits, and licenses as may be required by this Agreement.

26. **Familiarity with Work.** By executing this Agreement, SUBDIVIDER warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the Work and is aware of all conditions there; and (3) it understands the difficulties, and restrictions of the Work under this Agreement. Should SUBDIVIDER discover any conditions materially differing from those inherent in the Work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SUBDIVIDER'S risk, until written instructions are received from CITY.

27. **Time of Essence.** Time is of the essence in the performance of this Agreement.

28. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by SUBDIVIDER without prior written consent of CITY.

29. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

30. **Indemnification.** SUBDIVIDER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by SUBDIVIDER, SUBDIVIDER'S agents, officers, employees, subcontractors, or independent contractors hired by SUBDIVIDER. The only exception to SUBDIVIDER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SUBDIVIDER.

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32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

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36. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

**CITY OF MORGAN HILL**

**"SUBDIVIDER"  
5M Corporation**

By: \_\_\_\_\_  
J. Edward Tewes, City Manager

By: \_\_\_\_\_  
Rick Mancias, General Partner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager

Date: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Helene Leichter, City Attorney

Date: \_\_\_\_\_  
C:\Windows\TEMP\SUBIMPAG.wpd

Date: \_\_\_\_\_

**FORM OF LABOR AND MATERIAL BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_

Premium: \_\_\_\_\_

NOTICE: TO WHOM IT MAY CONCERN: That we,  
\_\_\_\_\_, as PRINCIPAL, and  
\_\_\_\_\_, as Surety, are held and firmly bound unto  
the City of Morgan Hill, California, ("CITY") in the sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_), lawful money of the United States, for the payment of which we bind  
ourselves, our heirs, executors, administrators, and successors, jointly and severally.

That the Surety's office is located at \_\_\_\_\_,  
Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the  
California Insurance Agent's License No., address, and telephone number as follows:

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party  
to the transaction:

Name of non-resident agent: \_\_\_\_\_,

Non-resident agent's office address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

THE CONDITION OF THIS OBLIGATION FOR TRACT 9396 - COYOTE CREEK PROJECT  
IS SUCH, that:

1. The Principal has agreed to complete the following improvements:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. If the Principal, its heirs, executors, administrators, successors, or assigns, or subcontractors,  
shall fail to pay for any materials, provisions, or provender, or other supplies or teams,  
implements, or machinery used in, upon, for, or about, the performance of the improvement,  
or for any work or labor thereon of any kind, or for amounts due under State law with respect  
to work or labor, the Surety or Sureties will pay the same in the amount not exceeding the  
sum specified in this bond; otherwise, the above obligation shall be void. In case suit is  
brought upon this bond, the Surety will pay reasonable attorneys' fees.

3. Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of work performed, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.
4. This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Civil Code 3181 et seq., so as to give a right of action to them or their assignees in any suit brought upon this bond.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

_____ Principal	_____ Principal
--------------------	--------------------

By: \_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in Fact

By: \_\_\_\_\_  
California Resident Agent

By: \_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Jim Ashcraft, City Engineer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Helene Leichter, City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager

Date: \_\_\_\_\_

(Jurat on following page.)

Labor and Material Bond Page 3 of 3

**FORM OF PERFORMANCE BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_

Premium: \_\_\_\_\_

NOTICE: TO WHOM IT MAY CONCERN: That we,

\_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Morgan Hill, California, ("CITY") in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

That the Surety's office is located at \_\_\_\_\_, Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

That the following clause must be completed if, in fact, a non-resident agent for the Surety is a party to the transaction:

Name of non-resident agent: \_\_\_\_\_,

Non-resident agent's office address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_.

THE CONDITION OF THIS OBLIGATION FOR TRACT 9396 - COYOTE CREEK PROJECT IS SUCH, that:

1. The Principal has agreed to complete the following improvements:

\_\_\_\_\_  
\_\_\_\_\_.

2. If the Principal shall well and truly perform, or cause to be performed, each and all of the requirements and obligations of the contract to be performed by the Principal, as set forth in the contract, then this bond shall be null and void; otherwise, it shall remain in full force and effect. In the event that suit is instituted to recover on this bond, the Surety will pay reasonable attorneys' fees and liquidated damages.

3. Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents or of work performed shall in all in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.



Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

By: \_\_\_\_\_  
California Resident Agent

By: \_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Jim Ashcraft, City Engineer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Helene Leichter, City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager

Date: \_\_\_\_\_

(Jurat on following page.)

[illegible]

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known to me to be the Attorney-in-Fact of the \_\_\_\_\_ (Corporation) of \_\_\_\_\_, \_\_\_\_\_, and acknowledged that it executed the attached bond to the \_\_\_\_\_ (City) \_\_\_\_\_ (State) City of Morgan Hill as such Attorney-in-Fact and as the free act and deed of the corporation, and that the bond was executed on behalf of the corporation by authority of its Board of Directors.

WITNESS my hand and official seal.

(Acknowledgment by Non-resident Agent  
as Attorney-in-Fact must be attached.)



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**APPROVAL OF PROFESSIONAL SERVICES CONTRACT  
FOR THE SEWER LIFT STATION B IMPROVEMENT  
PROJECT**

**RECOMMENDED ACTION(S):**

Authorize the City manager to execute a professional services contract with Freitas + Freitas Engineers in the amount of \$20,100 for design services to complete the Sewer Lift Station B Improvement project.

**EXECUTIVE SUMMARY:** On April 25, 2001, City Council authorized the City Manager to execute a consultant agreement for preparation of plans, specifications and estimates for the completion of the Sewer Lift Station "B" improvement project with Freitas + Freitas Engineers for \$24,200. During the design phase, the project increased in scope of work due to changed scope, design modifications and the addition of landscaping. Changes came from request by the adjacent property owner, who wishes not to see the lift station from his home. This unforeseen additional work was not anticipated during the original planning stages of the project. Since the original agreement expired on April 26, 2002, a new agreement is needed.

Staff has negotiated the attached proposal for \$20,100 on a time and materials basis with Freitas + Freitas Engineers to complete the project. Freitas + Freitas has successfully completed lift station designs for the City in the past and their previous work experience on this project will be invaluable for completion. Staff recommends that a new agreement be prepared with Freitas + Freitas for the timely completion of this project. It is our goal to complete this project by April 2003.

**FISCAL IMPACT:** Funds totaling \$610,000 are budgeted in the current fiscal year for the upgrade of this lift station (Capital Improvement Project #304B95, Lift Station B Improvements).

**Agenda Item # 9**

**Prepared By:**

**Associate Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**Agenda Item # 10**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

**AGREEMENT FOR ANNUAL TREE PRUNING**

**RECOMMENDED ACTION(S):** Approve attached agreement for Annual Tree Pruning with Shimada Landscape, Inc. in the amount of \$63,500.00, and authorize the City Manager to execute the agreement on behalf of the City.

**EXECUTIVE SUMMARY:** Bid packages were sent to eleven vendors and advertised in the newspaper. A bid opening for Annual Tree Pruning was held on Tuesday, July 9, 2002 and the result is as follows:

•	Shimada Landscape, Inc.	\$63,500.00
•	TruGreen LandCare	\$64,062.00
•	West Coast Arborists, Inc.	\$65,850.00
•	Arbor Science	\$74,490.00

The scope of work includes a complete pruning of 1,285 street and park trees in the Rancho Encino area and in Community Park, 25 large eucalyptus trees on Llagas Road near Woodland Estates, as well as tree and stump removal, crew pruning in various areas, and emergency call out. The residential grid pruning will rotate throughout the City as it has for the past three years. The agreement allows for an annual renewal of the contract, with Council approval.

Public Works has contracted with Shimada Landscape in previous years. Shimada's staff has demonstrated professionalism, knowledge, and has responded satisfactorily to our needs. Staff recommends awarding the contract to this vendor based upon low bid and their past three years of service to the City.

**FISCAL IMPACT:** Funding exists in the FY02-03 budget as follows:

Street Maintenance	202-42231-6100	\$65,000
Park Maintenance	010-42231-5440	\$10,000

**MAINTENANCE AGREEMENT  
SHIMADA LANDSCAPE, INC.**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and SHIMADA LANDSCAPE, INC., a California corporation, ("CONTRACTOR").

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the City of Morgan Hill City Manager's authorization, for amounts up to and including \$20,000. For amounts exceeding \$20,000, City Council authorization is required.
2. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish these services.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from August 1, 2002 until June 30, 2003. The CITY and the CONTRACTOR, by mutual agreement, may extend the contract one (1) year at a time from expiration of the initial contract term, not to exceed two (2) additional years.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of the following: providing all supervision, labor, vehicles, materials, tools, equipment, barricades, traffic and warning devices and all other items necessary to perform all designated work included in Exhibit "A" of this document.
3. **Compensation:** CONTRACTOR shall be compensated as follows:
  - 3.1 **Amount.** (\$75,000.00). Compensation under this Agreement shall not exceed (\$75,000.00).
  - 3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. The CONTRACTOR shall bill the CITY for all services rendered within five (5) days following the end of each month and the CITY shall endeavor to pay the CONTRACTOR within forty-five (45) days. For extra work not a part of this Agreement, written authorization by CITY will be required, payment shall be based on rates in Exhibit "A".
  - 3.3 **Records of Expenses.** CONTRACTOR shall keep accurate records of payroll. These records will be made available to CITY, upon request.

3.4 Termination. CITY and CONTRACTOR shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days written notice.

#### 4. Insurance Requirements

4.1 Insurance Requirements. CONTRACTOR shall not commence work under this Agreement until it has obtained CITY approved insurance. The **GENERAL LIABILITY, WORKERS' COMPENSATION AND AUTOMOBILE LIABILITY INSURANCE** required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California and shall name **by endorsement as additional insured** CITY, its elected officials, officers, employees, agents and representatives. All policies shall contain language to the effect that: (1) the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; (2) insurance shall be primary noncontributing and any other insurance carried by the CITY shall be excess over such insurance, and (3) policies shall provide that it shall not be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail. CONTRACTOR shall furnish CITY with copies of all such policies or certificates promptly upon receipt.

4.2 Workers Compensation Insurance. CONTRACTOR and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

4.3 Insurance Amounts. CONTRACTOR shall maintain comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage.

4.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

5. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

6. Non-Discrimination. CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

7. Independent Contractor. It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of CITY.

8. Compliance with Law. CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local government.

9. Ownership of Work Product. All documents or other information developed or received by CONTRACTOR for work performed under this agreement shall be the property of CITY. CONTRACTOR shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

10. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

11. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

a. Address of CONTRACTOR is as follows:

Shimada Landscape, Inc.  
239 Commercial St.  
Sunnyvale, CA 94086

b. Address of CITY is as follows:                      With a copy to:

Public Works Director  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037-4128

City Clerk  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037-4128

12. **CONTRACTOR'S Proposal.** This Agreement shall include CONTRACTOR'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

13. **Licenses, Permits and Fees.** Contractor shall obtain a **City of Morgan Hill Business License**, all permits, and licenses as may be required by this Agreement. Each CONTRACTOR and their subcontractors, if any, must possess all appropriate and required licenses or other permits to perform the work as identified in the Agreement documents. Upon request, each CONTRACTOR shall furnish the CITY with evidence demonstrating possession of the required licenses or permits. Failure to submit such evidence to the CITY'S satisfaction may result in the rejection of the proposal.

14. **Commencement of Work.** CONTRACTOR shall not begin work until notified in writing by CITY to proceed.

15. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties, and restrictions of the work under this Agreement. Should CONTRACTOR discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.

16. **Time of Essence.** Time is of the essence in the performance of this Agreement.

17. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by CONTRACTOR without prior written consent of CITY.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
19. **Indemnification.** CONTRACTOR agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.
20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and CONTRACTOR.
21. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
22. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
24. **General** - All work within City of Morgan Hill public property shall be performed in accordance with the City of Morgan Hill Agreement documents for Annual Tree Pruning Request for Proposal, including the Notice Inviting Bids, General Conditions, Special Provisions, Plans, Proposal and Agreement.
25. **Faithful Performance Bond** - The successful bidder, as CONTRACTOR, shall furnish to the CITY a good and sufficient bond in a form acceptable to the CITY, which bond shall guarantee that the CONTRACTOR will perform each and all of the requirements and obligations of the Agreement. If the Agreement is terminated because of failure of the CONTRACTOR to perform, costs to the CITY to hire a substitute service shall be deducted from amounts owed to the CONTRACTOR; or if sufficient amount is not owed, the bond will be called in the amount, up to the limits thereof, to cover the actual cost to the CITY to effect said work.
26. **Rights and Remedies in the Event of Default** - If the CONTRACTOR defaults in their obligation to enter into Agreement with the CITY, the CITY may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance claimed due by the CONTRACTOR or by proceeding against a proposal bond or by suit against the CONTRACTOR.



27. **Subcontractors** - CONTRACTOR shall not subcontract any portion of the work specified in this Agreement without the prior written consent of the CITY.

28. **Transfer of Interest** - No interest in the Agreement shall be transferred to any other party without permission of the CITY.

29. **Penalties** - Penalties pursuant to Section 3-15 of the Pruning Services, Emergency Work, and Section 3-7 of the Pruning Services, Removal of Defective or Unauthorized Work will be withheld from payments due the CONTRACTOR.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

ATTEST:

**CITY OF MORGAN HILL**

By: \_\_\_\_\_  
Irma Torrez, City Clerk  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
J. Edward Tewes, City Manager  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**"CONSULTANT"**

By: \_\_\_\_\_  
Helene Leichter, City Attorney  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager  
Date: \_\_\_\_\_



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**AWARD FOR SIDEWALK, CURB & GUTTER  
REPLACEMENT PROJECT**

**RECOMMENDED ACTION:**

1. Approve carry-over of funds budgeted for this project in FY01-02 to 02-03 fiscal year budget.
2. Award a purchase agreement by authorizing the issuance of a purchase order to Osuna Concrete for the construction of the sidewalk, curb & gutter replacement project in the amount of \$47,460.

**EXECUTIVE SUMMARY:**

This project provides for the replacement of damaged curb/gutter and sidewalk at various locations throughout the City.

This project did not receive any bids at the June 6, 2002 bid opening. At its June 26, 2002 meeting, the Council authorized staff to negotiate with a qualified contractor to perform the work per Public Contract Code Section 20166. Requests for proposal were sent to six qualified contractors and two bid(s) were received as listed below:

Osuna Concrete	\$47,460
Sycamore Concrete	\$69,647

Staff has investigated the qualifications and credentials of the low bid contractor, Osuna Concrete, and found them to be completely suitable to perform the work. It is recommended that Osuna Concrete complete the work for the Sidewalk, Curb & Gutter Replacement Project.

This project is scheduled to start in August 2002 and will be completed by September 2002.

**FISCAL IMPACT:** The total contract cost for this project is \$52,206, which includes a 10% contingency of \$4,746. The process overlapped FY01-02 and FY02-03. It is requested that the funds budgeted in FY01-02 be carried over for this work. Project will be funded through the Street Maintenance Budget.

**Agenda Item # 11**

**Prepared By:**

**Junior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

### **APPROVAL OF PURCHASE ORDER FOR DEMOLITION OF TWO STRUCTURES LOCATED AT 665 BARRETT AVENUE AND 16627 CORY LANE FOR BUTTERFIELD BOULEVARD EXTENSION, PHASE IV PROJECT**

**Agenda Item # 12**

**Prepared By:**

**Junior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

**RECOMMENDED ACTION:** Approval of purchase order to Randazzo Enterprises, Inc. for the demolition of two structures located at 665 Barrett Avenue and 16627 Cory Lane in the amount of \$21,726 for Butterfield Boulevard Extension, Phase IV project.

#### **EXECUTIVE SUMMARY:**

The scope of work for this project includes the demolition and removal of two vacant residential structures, an old single family residence at 665 Barrett Avenue and a duplex at 16627 Cory Lane. Randazzo Enterprises, Inc. will provide all tools, equipment, labor, trucking, and disposal fees to complete the described work. This work is required as the structures are in the alignment of the future Butterfield Boulevard Phase IV construction between San Pedro and Tenant Avenue.

A historical evaluation, attached, was completed for the old house at 665 Barrett Avenue in conformance with the project EIR and our General Plan. The evaluation found the structure is not historically significant.

Request for proposals were received via mail on May 23, 2002 and the bids received are as listed below. This project is scheduled to start in August 2002 and will be completed by September 2002.

Randazzo Enterprises, Inc.	\$21,726
Company of PJB Demo	\$23,480
Abco Construction	\$27,000

#### **FISCAL IMPACT:**

The total contract cost for this project is \$23,900, which includes a 10% contingency of \$2,174. The project will be funded in the FY02/03 Capital Improvement Program (CIP) Budget, Project #504D00 with a total appropriation of \$3,880,000.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

**Agenda Item # 13**

**Prepared By:**

**Public Works Director**

**Submitted By:**

**City Manager**

### **APPROVAL OF LEASE OF NITRATE REMOVAL PLANT**

#### **RECOMMENDED ACTION:**

1. Appropriate \$30,000 from our unappropriated Water fund balance to fund a temporary nitrate removal plant at the Burnett Well site.
2. Approve issuance of a PO to Ionics in the amount of \$30,000 for the lease of a temporary nitrate removal plant.

#### **EXECUTIVE SUMMARY:**

Earlier this summer, Council was notified that due to perchlorate contamination originating from a neighboring property, the City was required to close our Tennant Avenue production well and we are now drilling an emergency well at our new sports complex property near the corner of Condit and San Pedro Avenues. The new emergency well will not be on line until mid-August and we have found, based on high temperatures early in July, that we must find replacement production capacity for our Tennant Well prior to the new well being completed.

The City has now leased from Ionics of San Jose, a nitrate removal ion exchange treatment plant and have installed that treatment system at our Burnett Well site. The plant will be used only on an as-needed basis since the cost of operating the plant is substantially higher than operating City wells. The plant is now on line and ready should we need additional water to meet this summer's peak water demand. The nitrates at the Burnett well have historically been 40 - 50 mg/l, and with the State limit 45 mg/l, the City placed the Burnett well in a stand-by mode several years ago to only be used in case of emergency. We now have approval from the State Department of Health Services to operate the well with the nitrate removal plant and the removal process will ensure that the nitrates do not exceed 35 mg/l.

Ionics required a three month minimum lease of their facilities, the City previously authorized the first month of the lease. Staff recommends that Council approve a purchase order in the amount of \$30,000 to fund the second and third months of the lease. The treatment plant will be removed this September after we have the new emergency well on line. The City will seek reimbursement of these additional costs from our neighbor responsible for the perchlorate contamination.

#### **FISCAL IMPACT:**

Staff recommends the appropriation of \$30,000 from our unappropriated Water fund balance to fund this lease.



**REDEVELOPMENT AGENCY**  
**STAFF REPORT**  
**MEETING DATE:** July 31, 2002

**PRELIMINARY JUNE 2002 FINANCE & INVESTMENT  
REPORT**

**RECOMMENDED ACTION:**

Accept and File Report

**EXECUTIVE SUMMARY:** Attached is the monthly Preliminary Finance and Investment Report of the Redevelopment Agency of the City of Morgan Hill for the year ended June 30, 2002. The report covers activity for the 2001/02 fiscal year. A summary of the report is included on the first page for the Board's benefit.

The Redevelopment Agency monthly Finance and Investment Report is presented to the Agency Board and our Citizens as part of our ongoing commitment to improve and maintain public trust through communication of our finances, budget and investments. The report also serves to provide the information necessary to determine the adequacy/stability of financial projections and develop equitable resource/revenue allocation procedures.

This report covers all fiscal activity of the Redevelopment Agency.

**FISCAL IMPACT:** No budget adjustment required.

**Agenda Item # 14**

**Prepared By:**

**Finance Director**

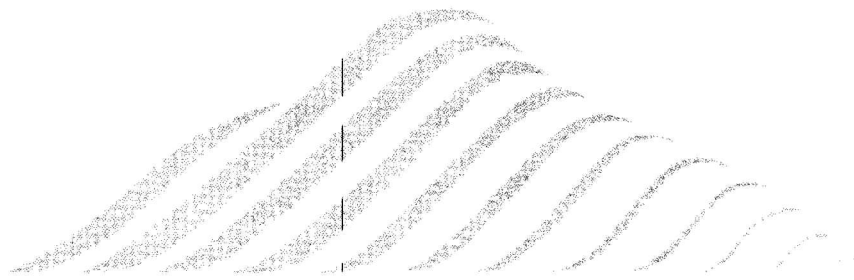
**Submitted By:**

**Executive Director**

**REDEVELOPMENT AGENCY  
OF THE CITY OF MORGAN HILL**

**MONTHLY FINANCIAL AND INVESTMENT REPORTS**

**Preliminary June 2002 - 100% Year Complete**



**CITY OF MORGAN HILL  
REDEVELOPMENT AGENCY**

**Prepared by:**

**FINANCE DEPARTMENT**

**REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL, CALIFORNIA**  
**PRELIMINARY FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2001/02**  
**FOR THE MONTH OF JUNE 2002 - 100% OF YEAR COMPLETE**

This analysis of the Redevelopment Agency's Financial status reflects 100% of the fiscal year on a preliminary basis. Not all transactions for the fiscal year ended June 30, 2002, are reflected in the attached. Certain expenditures incurred, but not yet paid, are not included in the financial activity. In addition, interest earnings for the fourth quarter ended June 30 have not yet been apportioned to the Agency and are therefore not included in financial activity. Certain other revenues have not yet been accrued and are also not reflected in financial activity.

**Revenues**

Through June, the Redevelopment Agency preliminarily received \$16,267,870 in property tax increment revenues. Most property tax revenues are received in December and April. The Redevelopment Agency, as of June 30, 2002, has collected \$100,000,000 in tax increment revenue under the original plan and preliminarily \$39,371,741 toward the plan amendment cap of \$147,000,000. Since the \$100 million tax increment cap for the original plan was reached during 1999/2000, all tax increment revenues collected during 2001/02 have been collected under the plan amendment.

Interest & Rental Income of \$864,290 was received as of the end of June, reflecting investment earnings for the first three quarters, through March 31, but not yet reflecting interest earnings for the quarter ended June 30. 'Other revenue' represents reimbursements and settlements received and totals \$746,766. These are usually extraordinary one-time type items. During January, a \$380,388 payment representing settlement proceeds was received from Santa Clara County.

**Expenditures**

Redevelopment Agency Capital Projects expenditures and encumbrances totaled \$23,930,919 and were 66% of budget. Expenditures for administrative costs for employee services, supplies and contract services were 95% of budget. All Business Assistance expenditures during 2001/02 have used monies collected under the plan amendment, except that \$5,075,207 in costs was financed with monies from the original plan. During January, \$327,650 was spent on a lease with an option to purchase the Lomanto property intended to be used as an Aquatic Center.

Budgeted expenditures plus encumbrances for Housing were 62% of the budget for a total of \$6,355,455. The largest component of this cost was an August payment of \$3,211,601 made as a loan for the Murphy Ranch Multi-Family Housing Development. Although certain loans and grants for various housing loan and grant programs have been committed, the related funds have not yet been drawn down by the recipients and, hence, are not reflected in the expenditures. All of the 2001/02 housing related expenditures have been funded with tax increment collected under the plan amendment.



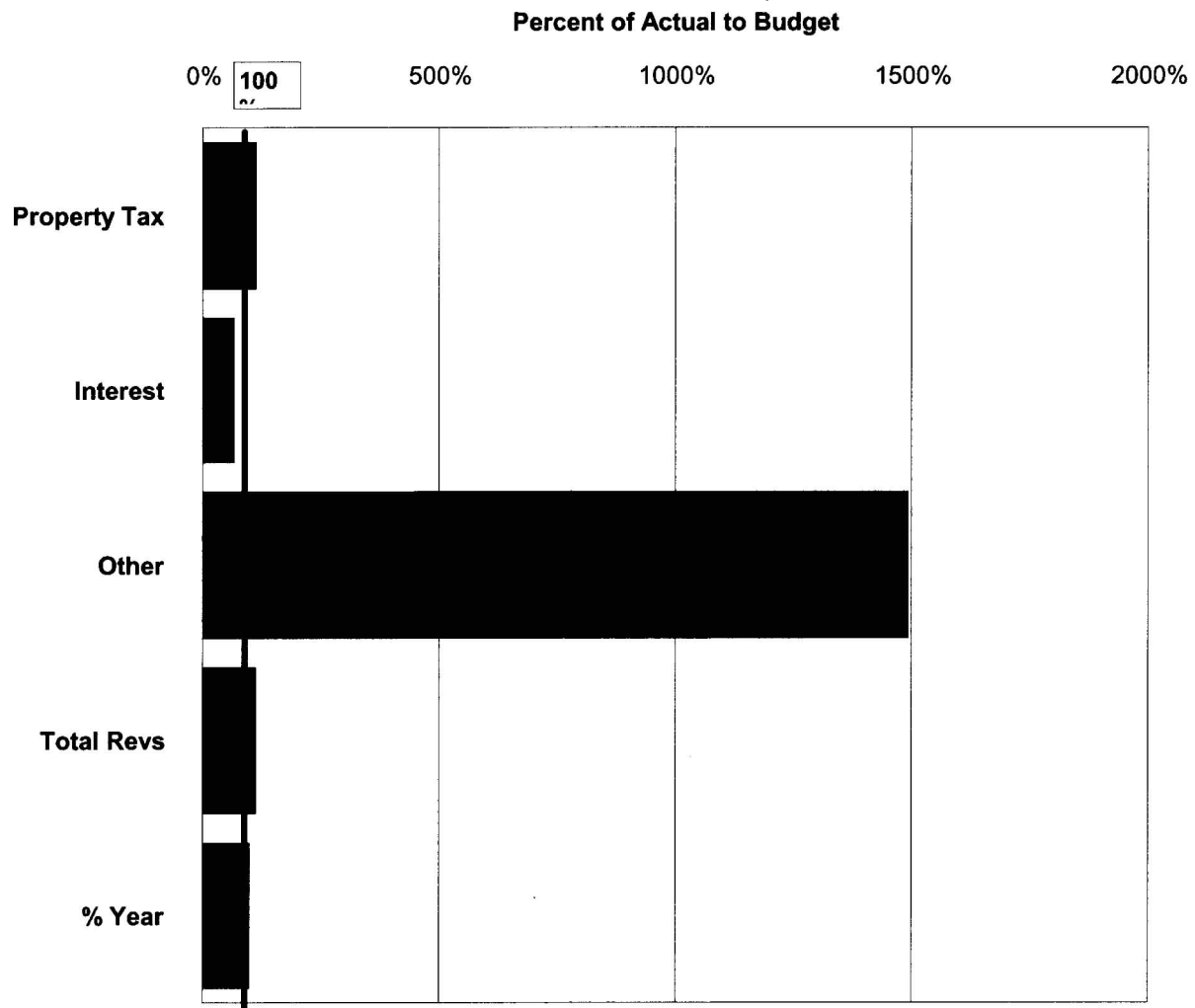




Fund No.	Fund	Fund Balance 06-30-01	Revenues		Expenditures		Year to-Date Deficit or Carryover	Ending Fund Balance		Cash and Investments	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved**	Unreserved	Unrestricted	Restricted
317	CAPITAL PROJECTS	\$23,208,336	\$14,196,369	112%	\$13,929,356	66%	\$267,013	\$11,773,886	\$11,701,464	\$21,935,431	
327 / 328	HOUSING	\$18,702,069	\$3,682,557	115%	\$6,328,727	62%	(\$2,646,170)	\$12,225,423	\$3,830,476	\$3,935,093	
<b>TOTAL CAPITAL PROJECT FUNDS</b>		<b>\$41,910,405</b>	<b>\$17,878,926</b>	<b>113%</b>	<b>\$20,258,083</b>	<b>65%</b>	<b>(\$2,379,157)</b>	<b>\$23,999,309</b>	<b>\$15,531,940</b>	<b>\$25,870,524</b>	
<b>SUMMARY BY FUND TYPE</b>											
	CAPITAL PROJECTS GROUP	\$41,910,405	\$17,878,926	113%	\$20,258,083	65%	(\$2,379,157)	\$23,999,309	\$15,531,940	\$25,870,524	
	<b>TOTAL ALL GROUPS</b>	<b>\$41,910,405</b>	<b>\$17,878,926</b>	<b>113%</b>	<b>\$20,258,083</b>	<b>65%</b>	<b>(\$2,379,157)</b>	<b>\$23,999,309</b>	<b>\$15,531,940</b>	<b>\$25,870,524</b>	
	<b>TOTAL CASH AND INVESTMENTS</b>									<b>\$25,870,524</b>	

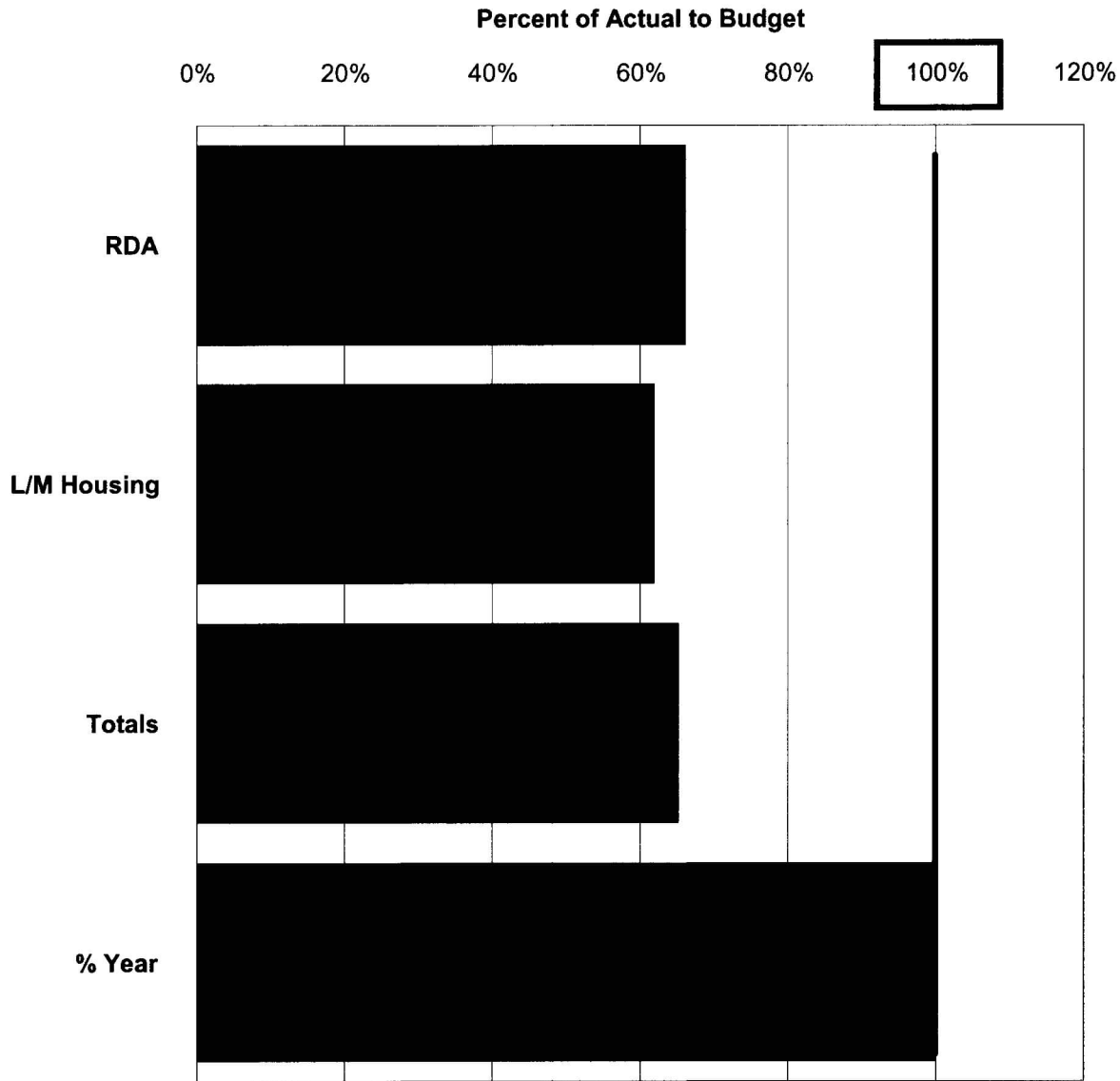
\*\* Amount reserved for encumbrances, fixed asset replacement, long-term receivables

# Redevelopment Agency YTD Revenues



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
PROPERTY TAXES	\$14,319,000	\$16,267,870	114%	\$15,027,465	8%
INTEREST INCOME/RENTS	\$1,287,000	\$864,290	67%	\$1,641,032	-47%
OTHER REVENUE	\$50,000	\$746,766	1494%	\$1,220,210	-39%
TOTALS	\$15,843,000	\$17,878,926	113%	\$17,888,707	

# Redevelopment Agency YTD Expenditures



Expenditure Category	Budget	Actual Plus Encumbrances	% of Budget
CAPITAL PROJECTS	\$36,169,723	\$23,930,919	66%
HOUSING	10,257,879	6,355,455	62%
TOTALS	\$46,427,602	\$30,286,374	65%

**REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL, CALIFORNIA**  
**PRELIMINARY FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2001/02**  
**FOR THE MONTH OF JUNE 2002 - 100% OF YEAR COMPLETE**

**Fund Balance**

The unreserved fund balance of \$11,701,464 for the Capital Projects Fund at June 30, 2002, consisted of \$919,528 collected under the original plan and \$10,781,936 collected under the plan amendment. It is the understanding of staff that the remaining monies in this fund collected under the original plan are to be expended on the Community & Cultural Center project. The unreserved fund balance of \$11,701,464 at June 30 included future obligations to pay \$7 million for the courthouse facility, an additional \$3,250,000 for purchase of the Gundersen property, an additional \$5.1 million for a sports complex, and \$1.61 million for the Lomanto property should the Agency agree to execute its option to purchase in accordance with the agreement. If all of these future commitments are subtracted from the \$11,701,464, the remaining unreserved fund balance at June 30 would be a negative (\$5,258,536). However, these commitments are expected to be paid out over the next 2 to 5 years. The Board has directed staff to prepare a plan to finance these commitments and other future capital projects.

The unreserved fund balance of \$3,830,476 for the Housing Fund at June 30 consisted of funds all collected under the plan amendment.





**REDEVELOPMENT AGENCY**  
**STAFF REPORT**  
**MEETING DATE: July 31, 2002**

**AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS,  
WATSON & GERSHON)**

**RECOMMENDED ACTIONS:** Authorize Executive Director to execute Consultant Agreement for legal services in FY2002-2003 with Richards, Watson & Gershon in the amount of \$55,000.

**EXECUTIVE SUMMARY:** Due to the specialized nature of Redevelopment Law and the volume and magnitude of the transactions, the Redevelopment Agency traditionally uses outside counsel for assistance with its legal needs, including negotiation and drafting redevelopment documents.

Redevelopment Agency staff has used the services of Richards, Watson & Gershon since August 1996. The attached Consultant Agreement with Richards, Watson & Gershon is in the amount of \$55,000. This represents a 40% decrease from the last fiscal year, which is due to the City Attorney performing more of the legal tasks and the anticipated level of work needed for projects in FY02-03.

**FISCAL IMPACT:** The contract amount of \$55,000 has been budgeted for FY2002/03; \$35,000 from account 317 (non-housing), and \$20,000 from account 327 (housing).

**Agenda Item # 15**

**Approved By:**

**BAHS Director**

**Submitted By:**

**Executive Director**

**CITY OF MORGAN HILL  
JOINT SPECIAL CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - JULY 10, 2002**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the meeting to order at 6:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Mayor/Chairperson Kennedy, Council/Agency Members Carr, Chang, Tate, Sellers

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the following closed session items.

**CLOSED SESSION:**

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure to Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**3.**



**EXISTING LITIGATION:**

Case Title: Kennedy et al. v. Davis et al.

Case Name/No.: Santa Clara County Superior Court Case No. CV 803679

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:32 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:05 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that the closed sessions were continued to the conclusion of the meeting's agenda.

**PLEDGE OF ALLEGIANCE**

At the invitation of Chairperson/Mayor Kennedy, retired Police Sergeant Gomez led the Pledge of Allegiance.

**SILENT INVOCATION**

**RECOGNITION**

Mayor Kennedy presented Sergeant Gomez with a Certificate of Recognition for his many years of outstanding service to the community as a member of the Morgan Hill Police Department.

Mayor Kennedy presented Youth Advisory Committee retiring members Leia Layus and Chelsea Laning with Certificates of Appreciation for their years of service to the City.

**PROCLAMATION**

Mayor Kennedy presented Paul Bennett, President of Sakata Seeds and Diana Blea, Human Resources Director, a proclamation in recognition of Sakata Seeds' 25<sup>th</sup> Anniversary in Morgan Hill.

Mayor Kennedy presented a proclamation to Mitch Dedert, with PG&E, designating June as PG&E Care Month. It was noted that PG&E is directing a comprehensive education and outreach campaign to increase the participation of residential customers who qualify for the CARE Program, which provides qualified PG&E low and fixed income household residential customers with a 20% discount on monthly gas and electricity bills.

### **CITY MANAGER'S REPORT**

City Manager Tewes informed the public that now is the time to be contacting state legislators as not much is being done with the State's budget, noting that they are in session. He said that the State has gone without a budget since July 1, the constitutional deadline and that there appears to be no momentum to reach a solution. He said that there is discussion that there may not be a budget until September. He stated that the Council adopted the City's budget on certain assumptions that depend upon resources allocated by the State or allocations in accordance with law established by the legislature. He said that there is still a great amount of uncertainty and that it appears to be setting up to be a historic delay in the adoption of the annual budget for the State of California.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **PUBLIC COMMENT**

Mayor Kennedy opened the public comment for items not appearing on this evening's agenda. He congratulated the Pride of Morgan Hill Softball teams, noting that the Morgan Hill Times reported that the 10 & under team finished 2<sup>nd</sup> in the State and will be going to the national tournament in Springfield, Missouri. The 12 & Under team also finished second in the State and will be going to the national championships. He stated that the Council is proud of the softball teams, indicating that the Council would be recognizing the teams at a future Council meeting. He wished the teams, families, and coaches the best as they go through the championship tournament and congratulated them on their successes. Also, the Morgan Hill Pinto baseball team is progressing in the baseball tournaments as well. No further comments were offered.

### **CONSENT CALENDAR:**

## ***City Council Action***

Council Member Chang requested that item number 2 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr,*

*the City Council unanimously (5-0), **approved** Consent Calendar Item 1 and 3-9, as follows:*

1. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF STEPHAN C. VOLKER**  
***Action:** **Authorized** the City Manager to Execute Amendment to Agreement With the Law Firm of Stephan C. Volker.*
3. **PILOT JOINT USE FACILITIES AGREEMENT BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT AND THE CITY OF MORGAN HILL**  
***Action:** **Authorized** the City Manager to Enter Into a Pilot Joint Use Facilities Agreement Between the Morgan Hill Unified School District and the City of Morgan Hill.*
4. **AWARD OF CONTRACT FOR SLURRY SEAL AND ROADWAY REPAIR PROJECT**  
***Action:** **Awarded** Contract to Silicon Valley Paving for the Construction of the Slurry Seal and Roadway Repair Project in the Amount of \$147,222.75, subject to review and approval by City Attorney.*
5. **APPROVE SOLE SOURCE PURCHASE OF WATER METERS**  
***Action:** **Approved** Purchase of Water Meters, Meter Parts and MXUs from Invensys Metering Systems (formerly Sensus Technologies) in Accordance With Section 3.04.120.A(4) of the Municipal Code - Brand Names or Equal Specification, and Section 3.04.150.C - Sole Source Purchases.*
6. **APPROVAL OF CONTRACT/FUNDING FOR CONTRACT/TEMPORARY ENGINEERING SERVICES**  
***Action:** **Approved** Contract and Funding for Two Temporary Full-time, and One Contract Part-time, Engineer, subject to review and approval by City Attorney.*
7. **AWARD CONTRACT FOR CONSTRUCTION OF THE WARREN/HALE/NOB HILL TERRACE STREET IMPROVEMENT**  
***Action:** **Awarded** Contract to Wattis Construction Company, Incorporated for the Construction of the Warren/Hale/Nob Hill Terrace Street Improvement Project, subject to review and approval by City Attorney.*
8. **SUBDIVISION APPLICATION SD 01-10: COCHRANE-COYOTE ESTATES**  
***Action:** **Took No Action**, Thereby, Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
9. **SUBDIVISION APPLICATION SD 01-11: COCHRANE-MISSION VIEW**

***Action: Took No Action.** Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

2. **MEMORANDUM OF UNDERSTANDING WITH MORGAN HILL UNIFIED SCHOOL DISTRICT AND SAN JOSE REGARDING PROVISION OF SERVICES TO SOBRATO SITE**

Council Member Chang requested that staff explain the traffic portion of the report.

City Manager Tewes stated that the agreement before the Council is a comprehensive agreement by which the City would provide public services, including sewer and water, to the new high school. Consistent with conditions previously established by the City Council in previous agreements, the Council has asked that environmental impacts be mitigated. He stated that this agreement identifies traffic to be one of the impacts. He said that the environmental impact report (EIR) adopted by the School District identified a potential problem on Burnett Avenue which when widened to four lanes may still carry a lot of a.m./p.m. peak traffic that would make it somewhat difficult for individuals in the adjacent mobile home parks to access Burnett Avenue, and ultimately Monterey Road. Therefore, the EIR recommended that there be a monitoring of the traffic situation and that if warranted, a traffic signal be installed at a future date. He indicated that this agreement embodies these representations.

Council Member Chang stated that the City-School Liaison Committee has worked hard on this project to make it work. It was her belief that this was not a common situation and that in general, the City would have required additional mitigations such as the installation of a traffic signal as part of project construction.

City Manager Tewes stated that it has been the City's experience that when the City is the lead agency performing the environmental report and a traffic report identifies an adverse environmental impact, the City would require the establishment of mitigation measures. If this meant the installation of a traffic signal, the City would require the construction of a traffic signal as part of the condition of approval. He noted that this is not an instance where the City is the lead agency for the project and that the School District is the lead agency. The School District has determined that they wish to first establish the school's traffic patterns and then determine whether a traffic signal is required. This agreement provides a protocol on how the studies and monitoring will be conducted.

Council Member Tate stated that it was his recollection that the Liaison Committee felt that the school times are not at times when peak hours/backups occur. The School District wanted to monitor traffic to see if it is a serious enough problem. He stated that if he was living in the adjacent trailer park, he would vary his travel plans around the school peak times. He did not believe that a traffic problem would occur.

Mayor Pro Tempore Carr stated that the School District has discussed adjusting their starting and ending times so that the intense period of traffic for the school does not coincide with the intense period of commute traffic on Burnett Avenue.

Council Member Chang inquired whether it would be up to the School District or the City to install the traffic signal if it is found that a traffic signal is needed based on the traffic study should area residents request said installation?

City Manager Tewes responded that it would be the School District's responsibility to install a traffic signal should it be warranted.

Mayor Pro Tempore Carr stated that the agreement stipulates that the School District will use the first year to study the traffic patterns to determine impacts and to determine whether installation of a traffic signal is warranted. He said that the Council could make sure that complaints and comments that come before the City Council are included in the comments in the study the School District completes after a year's period of time.

Council Member Chang said that the City is trying to do everything it can to assist the School District. However, she did not want the City to be responsible for a mitigation measure that the City is not responsible for.

Mayor Kennedy stated that this is a good faith effort, on the City's part, to work with the School District. However, should there come a time that the traffic counts warrant and justify the installation of a traffic signal, he would expect a good faith effort on the part of the School District to follow through with their comments. He felt that the agreement requires this and therefore, he would support the recommended action.

Council Member Sellers felt that the project was unique and that both entities are public agencies directly subject to concerns of the community. It was his belief that if traffic problems are experienced, both agencies would work together to solve the problem.

In response to Council Member Chang's inquiry, Mayor Pro Tempore Carr indicated that should a traffic signal be required, the School District would be responsible for its installation. He felt that the agreement before the Council is one that demonstrates a partnership. The City is providing services provided that the School District. Should the School District does not meet their responsibilities, there would be some services that would be important to it that the City would be providing at risk. Therefore, he felt that the City has leverage in making sure that off site improvements are completed. He felt that should problems arise in the future, they would be addressed, as necessary.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the*

*City Council unanimously (5-0) **Authorized** the City Manager to Execute an Agreement Between the City of Morgan Hill, the Morgan Hill Unified School District, and the City of San Jose Regarding Provision of Police, Fire, Water and Sewer Services to the Sobrato High School Site.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Redevelopment Agency unanimously (5-0), **approved** Consent Calendar Item 10 and Item 11, as follows:*

**10. REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 19, 2002**

**Action:** ***Approved** the minutes as written.*

**11. SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 26, 2002**

**Action:** ***Approved** the minutes as written.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

**12. ZONING AMENDMENT APPLICATION, ZA-00-05: HALE-GLENROCK/SHEA HOMES - Ordinance No. 1572, New Series**

Director of Community Development Bischoff presented the staff report.

Council Member Tate indicated that the staff report references the June 25, 2002 Planning Commission meeting, noting that the staff report did not include these minutes. He said that some issues were raised at the meeting because the action taken was not a unanimous vote. He requested that staff relate what the Planning Commission's issues were.

Planning Manager Rowe stated that the General Plan requires that a row of single family homes interfacing between the R-2 portion of the project and Hale Avenue. Alternative plans were reviewed by the Planning Commission. The most recent alternative shows a drive aisle that extends around the back side of the project so that the units have the garages accessible on the back side and the front elevations face toward the local street inside the development. There was a question

whether these units should be oriented such that the community would be looking at back fences and garages from Hale or whether the units should face toward the creek and recreational amenities. He informed the Council that this issue was not fully resolved. Staff is recommending that the details of the single family homes be addressed as part of the subsequent R-2 RPD amendment so that the applicant can proceed with a tentative map application. He indicated that the Planning Commission supports this action. He said that staff would work out the final details with the applicant and return to the Council at a later date.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1572, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1572, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN IS ON A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**13.     ZONING AMENDMENT ZA: 01-16: COCHRANE-MISSION RANCH - Ordinance No. 1573, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Residential Planned Development Ordinance No. 1573, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Residential Planned Development Ordinance No. 1573, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR THE 98 ACRE MISSION RANCH DEVELOPMENT LOCATED ON THE SOUTH SIDE OF COCHRANE ROAD AND EAST OF MISSION VIEW DRIVE IN THE R-1 (7,000)/RPD ZONING DISTRICT. (APN 728-32-001, 002, 003 AND 728-33-001) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

**14.     ZONING AMENDMENT ZA 01-15: COCHRANE-COYOTE ESTATES - Ordinance No. 1574, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Residential Planned Development Ordinance No. 1574, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Residential Planned Development Ordinance No. 1574, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR APPROXIMATELY 18-ACRES ON THE WEST SIDE OF PEET ROAD FROM R-1 (9,000) TO R-1 12,000 RPD AND INCORPORATING THE AREA WITH THE ADJOINING COYOTE ESTATES DEVELOPMENT, LOCATED ON THE NORTH SIDE OF COCHRANE ROAD AND WEST SIDE OF PEET ROAD. (APN 728-35-008, 9 & 10; 728-36-001 & 10) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

**15.     CONFIRMING THE SANTA CLARA COUNTY FIRE MARSHAL'S REPORT ON BRUSH ABATEMENT**



Assistant to the City Manager Dile presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**            **No Action Taken.**

**16.    APPLICATION ZA-02-07: TEXT AMENDMENT RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) STANDARDS AND CRITERIA**

Senior Planner Rowe presented the staff report.

Council Member Sellers noted that the staff report states that the proposed recommendations would increase the opportunity and allow the City to fill the moderate level gap. He requested that staff explain how the City assures that the Below Market Rate (BMR) units are not shifted from low to medium income units.

Mr. Rowe stated that in order for a project to obtain maximum points in the housing needs category, a developer would need to provide the traditional 10% BMR units. The proposed amendment would provide an opportunity to provide more than the 10%. The Measure P Committee would like to provide the opportunity to be able to obtain additional points but not to the extent to where a developer cannot afford to participate in the BMR program. He informed the Council that the Measure P Committee consulted with the City's Housing staff to make sure that they were comfortable with the proposed amendments and that they would not negatively affect the success of the City's BMR program. He stated that the Housing staff is supportive of the amendments.

Council Member Chang referred to the double park fee, noting that it has been capped at \$3,000 per unit. She inquired as to the justification for capping the double park fee, noting that the Council would be considering fee increases in the future. She inquired why it is being proposed to cap the park fees at \$3,000 at this time, noting that the normal fees would be close to \$5,000.

Mr. Rowe indicated that ongoing projects have made a commitment to pay double fees with one project agreeing to pay triple fees. The cap was based on the understanding of the current in lieu fees that can be factored into the overall budget of a development. If the in lieu fees are raised by a significant percentage, you would double or triple the fees and would represent a substantial increase in what those projects would be required to contribute in fees in lieu of park dedication. He noted that public facility improvements are equivalent to approximately \$1,000 per unit in terms of developers' cost. When you start looking at standard fees and the increases, you would multiply this number to the double or triple commitment. The per unit cost for the three points to be received may be \$2,000 or \$3,000 per unit. This would be well in excess of the \$1,000 per unit cost per point per unit in other categories. It was the goal of the Measure P Committee that commitments made

would equate to \$1,000 per unit to purchase a point. He stated that it would cost more than \$1,000 for the point if a developer pays in lieu fees.

Mayor Kennedy indicated that the Park Master Plan identifies the need for additional public parks. He inquired how the proposed amendments would help achieve the goals of the Park Master Plan? He inquired how the City would fund the new parks that are needed in terms of capital and maintenance costs?

City Manager Tewes said that next week, the Council would be considering recommendations regarding development impact fees. If enacted at the levels proposed, they would be sufficient to meet the Park Master Plan's objective for the acquisition and development of new park space. However, development impact fees cannot pay for the cost of maintenance. He stated that it has been Council policy to take Measure P fees and deposit them into a park maintenance fund. It has been the Council's practice to try to maintain the purpose of the fund and only use the interest earned on the fund for annual maintenance costs. He said that it is this fund that is available to help support the maintenance of existing parks as they are developed.

Mayor Kennedy inquired whether the City would be jeopardizing its ability to provide the funds to maintain the parks by capping these fees?

City Manager Tewes stated that it was his understanding that the cap is proposed at a level that is a little more than the current doubling rate. Therefore, there would not be a reduction in the amounts that would be coming into the funds. He did not believe that the authors of the proposal were considering the City's budgetary concerns or how to finance the capital programs. They were concerned about the Measure P process and how to gain points. This is why it is important for the Council to review the recommendations as the Council would bring forward a different perspective than the authors of the proposed sets of criteria.

Mayor Pro Tempore Carr clarified that the Measure P Committee attempted to have points applied uniformly throughout the standards and criteria where it equates to approximately \$1,000 per unit.

Mayor Kennedy opened the public hearing.

Rocke Garcia indicated that he served on the Measure P Committee. He said that the Committee worked hard on a lot of the issues being discussed. He stated that the Committee felt strongly that the City needs to eliminate mini parks. He noted that more points are gained if a developer expands a local park. He said that the Quimby Act requires so many acres of park per 1,000 residents. He referred to page 254, Section 8 of agenda item 6. The Committee wants to encourage smaller projects to pay the fees so that the City does not have mini parks and that there is better use of dollars. Yet, in item 6, the City is encouraging larger projects to put more into large parks. He would like to encourage smaller projects (10-23 units) to pay in lieu fees in order to eliminate or avoid mini

parks. He acknowledged that these would be private parks, noting that developers would still be paying park fees.

Scott Schilling stated his support of the Planning Commission's recommendations for the Measure P standards and criteria and the competition. He indicated that all projects have to pay current or future park impact fees. The specific area being discussed in the criteria is that if you are a small project of 23 units or less, the developer can opt out of building a park. However, the developer would still have to pay impact fees regardless of whether it is \$3,000 or \$5,000 per unit. If a developer does not install a park, the developer would have to pay the additional funds above and beyond the impact fees in order to not build a park in a project. A developer would have to pay the impact fees in addition to the \$3,000. This would provide an impact fee and additional funds for City parks instead of getting mini parks associated with small projects. He noted that every project would have to pay impact fees, no matter the established amount.

Dick Oliver said that the rationale for limiting the amount is the issue of a nexus (relationship between the fee and the project being built). There has always been a concern that the Measure P point system goes over a certain level and that the City would be forcing developers to pay the fees without a nexus between the project and the fee. If you get too many of these, then Measure P could be subject to litigation for conflicting with State statute. The Measure P Committee is recommending a fee structure that makes sense and has a nexus. It is felt that the \$1,000 per unit is a range that is appropriate.

City Manager Tewes said that the issue of whether or not contributions under Measure P are subject to a nexus or a proportionality requirement is one that home builders have raised a number of times. Staff has consistently held that these are voluntary payments, noting that only 47% of the developers pay them. They are paid only for the purpose of moving ahead in the line to get an allocation earlier rather than later, they are not subject to AB1600 statutory requirements, and that there is no requirement of a nexus. He agreed that it would be good to establish a cap at a certain level but that the cap is not because of the nexus issue.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1575, New Series.*

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** Ordinance No. 1575, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN*

*CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Council Member Tate felt that the Council focused on an area that warranted further review and discussion next year as it moves along.

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **17. CHAMBER OF COMMERCE'S PROPOSED "MARKETING PLAN FOR ECONOMIC DEVELOPMENT AND TOURISM"**

City Manager/Executive Director Tewes presented the staff report. He indicated that the Chamber of Commerce submitted their Economic Development and Tourism/Marketing Plan a few weeks ago. The Council/Redevelopment Agency requested that staff review the plan and provide it with some thoughts on how to proceed. He indicated that staff's recommendations are included in the agenda packet (page 276) for Council/Agency reference. He stated that the plan developed by the Chamber represents a great deal of work by their volunteers and professional staff. In addition to their efforts, the Plan is bold, aggressive and sets a new direction for the Chamber of Commerce. The Plan establishes a new structural organization for the Chamber, one that would move them into a new headquarters and new building for tourism and visitor services. He stated that in addition to the money they are asking the City to contribute, the Chamber is committed to raising over \$100,000 per year than they currently raise in order to implement this plan.

Mr. Tewes stated that staff saw three policy issues that would be appropriate for the Council/Agency to address:

- 1) *Should the City Council and the RDA allocate more public dollars toward economic development staffing and marketing in this era of limited resources?*

Mr. Tewes informed the City Council that at its annual goal setting retreat, it established one of its goals for the year to expand the level of effort in economic development and marketing. The Council specifically requested that staff work with the Chamber to develop a joint marketing plan. Also, at the retreat, the Council indicated its desire to increase the amount of RDA funds available for economic development. In the spring, when the Council went through its allocation process, the Council/Agency increased the allocation available to economic development by \$1 or \$2 million more than had been previously allocated. With respect to marketing, the Council/Agency indicated that there should be an expanded effort. He stated that it is staff's recommendation that the expanded effort be established with a price tag of \$50,000, an amount sufficient to be used for marketing

materials, ad placements, etc. This \$50,000 would be in addition to the existing \$90,000 which the Council/Agency could consider a base level of support. He stated that the Council has always recognized that economic development is an investment in the future.

- 2) *Should the Council/Agency agree that the City should spend more, should the focus of the spending be on the items identified in the Chamber's plan, specifically tourism and visitor services?*

Mr. Tewes indicated that the Chamber is proposing that funding be spent to support staff and marketing. He stated that the Chamber has included an effort in promoting tourism and providing visitor services. He suggested that this is a small part of the local economy and asked if this is where the City wants to pay the extra dollar, if it had one (tourism). He indicated that the General Plan lists a number of economic development goals. The Council adopted, in the General Plan, a goal that the City promotes additional tourism. He said that the General Plan goal was to work on finding visitor attracting facilities and things that would attract tourists (e.g., museums, etc.). If the private sector was to come through with the subsequent phases of the aquatic center, the City would have an outstanding aquatic facilities that would bring visitors and tourism. He said that one can promote tourism and economic development by building tourism facilities and encouraging them or by providing services to tourism as suggested in the Chamber's proposal. He said that staff believes that this is something that the Council/Agency should think about. Staff recommends that the Council/Agency consider establishing a subcommittee to work with the Chamber on how to move forward on the tourism goal and to check/test availability of other new private resources that are promised in the plan to see whether those in the tourist and hospitality industries are prepared to support such an effort. Staff further recommends that the Council/Agency look at other options such as establishing a subregional visitors tourism effort with Gilroy and others or contract with San Jose. Staff felt that it was important for the Council/Agency to proceed to evaluate options before it makes a final judgement in this area.

- 3) *Should the economic development strategy of the City and the Agency be implemented by adding staff at the Chamber of Commerce and the suggestion of the plan that they proceed working on business attraction/retention in a more proactive way?*

Mr. Tewes indicated that the material presented to the Council/Agency suggests that the City proceed with this work. The question is whether the City should spend more. He said that it is staff's recommendation that before the City makes a multi year commitment to provide additional staffing to be proactive, the City needs to be clear what is meant by being "proactive." Staff is recommending that the Council/Agency first go through a process of clearly identifying its economic development strategy. He noted that the Council has adopted a similar approach with respect to the Housing strategy that is underway and would be presented to the Council before the end of the calendar year. In this year's workplan, staff committed to the Council the development of an economic development strategy and that it would be appropriate to work with the Chamber in its

development. Staff does not recommend that the City proceed with a multi-year financial commitment until the City first has the strategy in place that would be implemented by the Chamber and City staff.

Mayor/Chairman Kennedy opened the floor to public comment.

Alex Kennett acknowledged members of the Chamber staff, Chamber Board and members of the Chamber of Commerce in support of the Chambers' efforts to improve economic development in Morgan Hill. He said that the Chamber has brought forth and was given some tools in which to do a job in terms of promoting, retaining and gaining businesses (economic development in general). The result of this is that the Chamber/City is here again 10 years later, with no change. He said that just enough money was provided 10 years ago to provide the tools but not the means to use the tools. This is what he sees again tonight in staff's recommendation. He always felt that during the process of bringing forth economic development and a tourism plan that the General Plan Update is the basic document to direct economic development. He said that Chamber prides itself in its cooperative efforts in developing this economic development plan and tourism plan. He indicated that at every Chamber meeting, there was at least one city staff member as well as one elected council member in attendance the entire process. He felt that staff's answer to the plan was an answer to a different plan and was not the one that the Chamber worked on.

Sunday Minnich, Director of the Chamber of Commerce, highlighted some of the items from the marketing plan which the Chamber feels are important and addressed some of the questions listed in the staff report. She said that the Chamber has looked at the entire development of this plan over the last five months as a joint partnership with the City. She said that the plan is not developed for the Chamber to do the marketing as a stand alone but in partnership with the City of Morgan Hill. She indicated that this is the Chamber's number one priority. The Chamber felt that with staff's participation over the last five months, the Chamber had the City's support. She indicated that the marketing plan addressed staff's lower priorities in order to allow staff to focus their time on high priorities (e.g., implementation of the auto district strategy and providing ombudsman services to businesses). She informed the Council/Agency that she received a call from a construction company with a client who read about Morgan Hill's interest in developing an auto district and would like to discuss bringing car dealerships to Morgan Hill. She noted that this person read this through a proactive approach that the City took in promoting and marketing the auto district. She indicated that she immediately referred this call to Mr. Toy in order to schedule a meeting for Thursday morning as it is an item that is on the City's high priority list. She felt that this was a perfect example of how the City's proactive approach in promoting marketing helped to promote Morgan Hill's interest in an auto district. She pointed out that this professional firm made their first point of contact with the Chamber of Commerce to obtain information. This is an example of how a partnership with the City and the Chamber can work through marketing efforts.

Ms. Minnich stated that the report the Council/Agency received from staff also states the

phenomenal industrial and commercial growth the City has experienced over the past three years. She applauded the City for facilitating the growth and felt that the figures presented in the report were perfect examples on how marketing is important to fill the space that have been facilitated by Business Assistance and Housing Services staff for business development. It is the Chamber's intention to develop, plan, and fill vacant buildings that have already been zoned and approved for development. She felt that the direction should come from city staff and Council through their facilitation of growth and what has been approved through the Visioning Process in the General Plan Update. She stated that the Chamber does not have intentions of marketing what the City does not feel would fit in with the infrastructure. The Chamber does not have a desire to alter land uses or negotiate city services or program. She indicated that the partnership is one that the Chamber would market and the City could provide services.

Ms. Minnich requested that the Chamber be funded through the Redevelopment Agency for money already allocated for economic development. In return, she said that the Chamber would increase the Transient Occupancy Tax (TOT), sales taxes, and property taxes which contribute to the General fund to support city services that improve the quality of life for residents. She noted that the staff report states that the Chamber must either increase sales tax by approximately 1.5% or the TOT by 10% for the marketing plan to pay for itself. She noted that the report does not state anything about property tax which the Chamber plans on increasing as well. The Chamber believes that it can meet the goal if the marketing plan is adopted. To alleviate any confusion about the hiring of a staff person, the marketing plan states that the marketing professional will be an employee under the day by day management of the Chamber. Because of the importance of the Chamber's partnership with the City, the Chamber has asked city representatives to assist with the selection of this employee. She said that the Chamber would be accountable to the City based on its contract and the implementation of the marketing strategy as outlined in the marketing plan. If the City decides to hire a marketing person or consulting firms, the City would not receive the benefit of private funding or have the regional relationships that the Chamber has already established. She indicated that two task force committees consisting of professional individuals have put a lot of time and effort into the marketing plan. It is felt that the Chamber has addressed staff's comments, questions and concerns submitted throughout the past five months. With Council/Agency approval, the Chamber is ready to work with city staff to hire a marketing professional and start the partnership in marketing Morgan Hill.

Mr. Kennett said that staff's recommendation ignores two important issues: 1) The Chamber was given the mandate of a sense of urgency. He stated that the sense of urgency is not addressed. He said that the Chamber cannot spend much more time on consultants or time to develop a plan. 2) The City would provide the Chamber with just enough marketing tools but not the implementation of the tools. He said that the Chamber can get its website up and all the tools to implement the marketing plan. However, there is no one in place to make the marketing plan work.

Council/Agency Member Sellers stated that he has conducted economic development in a smaller

scale. He said that in recent years, there have been attempts to throw money at the problem and to buy that which may not be economically feasible in a community. He felt that this has always been a short-sighted approach. He noted that Gilroy has thrown millions of dollars at big box retailers, and that Morgan Hill has not done this nor has Morgan Hill done it successfully. He inquired whether the allocations being requested by the Chamber are sufficient to accomplish the marketing plan without the need to return for additional funding?

Ms. Minnich responded that the Chamber takes its direction from the Council. If the City does not want big boxes, the Chamber would not go after big box businesses. She indicated that the Chamber is providing marketing and bringing staff businesses. It would be up to staff to negotiate City programs and services with the businesses. She noted that the Chamber is not looking to rezone properties. The Chamber is looking to fill what has already been included in the General Plan update and what has been zoned industrial, commercial and vacant space to help businesses thrive and to create jobs in Morgan Hill. The Chamber is not looking for sprawl, but looking for infill through the visioning of the General Plan update.

Council/Agency Member Sellers inquired whether the City would end up in a situation where each quarter the City would receive requests to spend significant amounts of capital should the City enter into this agreement.

Mr. Kennett felt that the Chamber has identified its funding needs, noting that the Chamber is looking at a five-year process.

Rocke Garcia stated that as a local developer and home builder, he supports the Chamber's Marketing Plan. He felt that a full time marketing professional would help and that he did not believe that enough can be spent toward marketing.

David Dworkin, Holiday Inn Express, indicated that he has had extensive work in the hotel industry over the last 12 years from Monterey to San Francisco, running six hotels last year. He said that the City is two-years late in its economic development efforts. He said that the TOT is the primary source of funding for the general fund. He felt that the City over developed hotels. If there are too many hotel rooms and not enough demand, it would result in lower rates. He said that the TOT is down approximately 45% from the prior year. He said that this is normal for Silicon Valley, noting that Silicon Valley is taking a harder hit than most of the other areas. Tourist areas such as Monterey are not experiencing a problem. He felt that the City needs to make sure that it allocates the Chamber in both aspects. He felt that the City has all the tourist ingredients talked about such as nearby golf courses, movie theaters, wineries, etc. He recommended a long term commitment between the City and the Chamber in order to be successful because it would take many years to see results.

Mayor/Chairman Kennedy stated that he has heard that in order for tourism to work, the City needs



major attractions in Morgan Hill that are lacking. He inquired as to the attraction in Morgan Hill that would encourage individuals to stay in Morgan Hill?

Mr. Dworkin stated that the City has the soccer complex that fills hotel rooms. He felt that Morgan Hill has a better base than the City of San Jose. He felt that the residents of Morgan Hill need to be educated on what there is in Morgan Hill and package it. He felt that bus tours can be taken from Morgan Hill to surrounding attractions as it is central to San Francisco and Monterey. The City itself does not have a draw other than its location. He did not know what can be done to address this. He said that the aquatics center and a baseball park would help address the issue of encouraging others to stay in Morgan Hill. He said youth sports are part of the equation as parents will spend money on their children. He felt that there were many avenues that are new that can be addressed and that it would take a subcommittee to hire the marketing professional.

Scott Schilling noted that it was indicated that the housing market was decent. However, the commercial and hotel market is the opposite of the current housing market. He stated that the marketing efforts by the Chamber can have a significant impact on TOT revenues and other revenues that eventually come to the City due to their efforts. He said that the Chamber is frequently one of the first contacts he makes, as a developer, when he looks at other areas. He looks to the Chamber for numbers, what is taking place in a town, what kind of events they hold, and services offered. He felt that the Chamber plays a critical role with a new perspective business that want to come into town. He said that the Chamber has the ability to raise private sector funds for marketing efforts which cannot often be done through the City unless TOT revenues can be used for marketing efforts. He said that there are some significant marketing efforts that can be put together by the Chamber and local hotel industry as there are a lot of things that the area has to offer such as Bonfonte Gardens and the Coyote golf course that would help fill hotel rooms and bring individuals into the city. He stated this support of the Chamber's marketing plan as it can have a significant impact on bringing in new business, creating interest in the community, filling hotel rooms, and restaurants.

Bill Weber, member of the Economic Development Committee, speaking for himself, felt that the issue is that of becoming proactive, and not reactive. He felt that the Chamber is being proactive in recommending that it move forward, in a partnership with the City, with its marketing plan of making Morgan Hill the place to be.

No further comments were offered.

Council/Agency Tate stated that he agreed that the Council requested, at their retreat, that staff and the Council work with the Chamber of Commerce to come up with a mutually agreeable and supportable proposal, noting that he acted as the Council's liaison to this effort. He said that he spent five long months in meetings trying to help do so. He indicated that he is a member of the Chamber of Commerce and that an important point to keep in mind is that the Council represents the citizens

of the community. He said that the strong advocates of the Chamber are the individuals who help the City the most and are willing to come forward to help the City in this effort. He stated that he did not have a problem with the contents of the staff report as the Council needs to work through all the issues raised by staff. He said that he was disappointed that the City is not working in sync the individuals putting together an agreeable proposal that can be carried forward. He felt that the City needs to get to the point where it has an agreeable partnership to move forward. He stated that he was leaning toward the approach that the Chamber has suggested. He said that a couple of weeks ago, when this was presented to the Council, he was leery about making a long term commitment because the Council has to gage the proposal as it goes along. He is skeptical about approving additional staff for a separate tourism program in the second year. However, he felt that these were elements that the Council could work through and that it would not take long to discuss the economic development philosophy, as a Council. He stated that he did not have a problem with doing what staff is recommending but that he was disappointed that it was not completed and that individuals were not heading in the same direction.

Mayor/Chairman Kennedy stated that as he read the staff report and revisited the Chamber's report, he felt that the City needs to be proactive. When the General Plan was put together, an economic study was prepared, noting that several of the Council members were part of the process of putting together the General Plan. Factual hard numbers were identified that need to be dealt with. He noted that the Chamber is asking for a five-year budget that averages \$90,000 per year for a total of \$585,000+. The Chamber is asking for a \$1 million over this amount and felt that this was a significant commitment to make. He was not comfortable making a commitment to provide an additional \$500,000 to the Chamber this evening as he did not believe that there was sufficient factual data to show that the City is heading in the right direction. He liked the idea of expanding the tourism business, but he did not know if this was based on emotion or whether there are significant dollars that can be captured. He stated that he would like to receive additional information before making the \$500,000 commitment, perhaps using data already gathered that could make a financial case for what is being requested. He wanted to know which area would have the greatest bang for the dollar and felt that this is a piece of information that is missing. He recommended that additional time be given toward answering these questions. He stated that he wanted to have enough factual information before making a \$500,000 decision.

Council/Agency Member Sellers inquired whether it was a comfort level of \$500,000+ over five years that Mayor Kennedy was not comfortable with or whether he felt that there was not enough information to see the benefit of different approaches?

Mayor/Chairman Kennedy noted that it was stated by one of the speakers that it was important that the person be offered a long term commitment toward economic development. Even though there are annual re authorization requests, he said that this was not something that he would want to start off and then two years later state that the program is not working, only to lay off the individual. He said that he would prefer to be more cautious going into the process. He did not believe there were

specific quantifiable goals/results that can be achieved identified.

Council/Agency Member Sellers noted that Gilroy has a model that in some way parallels what is being addressed. He felt that everyone involved in the process has to be clear about the economic development goals. He stated that when he first came onto the Council, money was given to Specialized Bicycles to make sure that they stayed in town. He supported this effort even though it was controversial at the time. However, it was the right thing to do because of the benefit to the community in terms of what Specialized brought/meant to the community and that it was not just about the money. He said that the Council needs to identify what businesses should be brought into the city. He said that he was uncomfortable with the economic side of things. He said that there were two components to the proposal and that he wanted to make sure that he has both components. He stated that he understood the unique role that the Chamber can play as well and felt that the City needs to find a balance. He stated that he was enthusiastic about the tourism part of the proposal because it is not a component that is being done at this time nor is it something that could be developed on the public sector side effectively for a variety of reasons. He felt that there were significant merits on trying to proceed with the Chamber's proposal with clear understanding. He noted that the staff report outlined quantitative criteria on the tourism side. He recommended that the City require quantifiable measures so that a year from now, significant progress can be identified. He felt that progress needs to be shown against what the economy is doing and that the Chamber's proposal is an added value. He felt that there was a lot of merit to the proposal and that he was anxious about delaying it too long. He recommended that the Council discuss the proposal further to see if it can be refined.

Mayor/Chairman Kennedy referred to page 16 of the Chamber's proposal that identifies a small number of measurable goals. He felt that is a part of the proposal that needs to be developed further such as establishing baseline data and performing benchmarks with other cities. He further recommended that the City look at successes and failures to see what worked and what hasn't worked. He stated that a concern that he had with the staff report was that it focused heavily on the weaknesses. He felt that the City needs to be building on its successes, noting that the City and the Chamber have been successful but that there is little talk on how you build on the successes.

Mayor Pro Tempore/Agency Member Carr indicated that he participated in some of the meetings between the City and the Chamber but that it was Council/Agency Member Tate who was the driving force/liaison between the Council and the Chamber on this project. He referred to the third recommendation in the staff report that addresses a clear focus on the economic development strategy. He agreed with staff that the City is close in focusing on an economic development strategy. He said that the City is going through an expensive effort to conduct a Downtown Plan that he believes is part of economic development. He noted that the City has an annual contract in place with the Chamber that the Council will be reviewing soon. He inquired how this contract plays into economic development? He noted that this evening, the Council conducted a workshop on the update of the zoning ordinance and indicated that a question was raised whether the zoning

ordinance was authored in a way that makes the City less competitive. Also, in this evening's agenda packet was the business assistance guidelines that were put together in 1999, in a different economy and a different day.

Mayor Pro Tempore/Agency Member Carr noted that the City is a different Morgan Hill today. He felt that there were a lot of steps that need to take place before deciding on an economic development strategy. He has a lot of questions regarding retention versus attraction. He inquired whether the City is talking about a strategy in today's economy that helps retain companies that are located in the City as layoffs are taking place throughout the valley or whether the City is talking about a strategy that attracts businesses regardless of the retention. If this is the case, he asked what businesses should be attracted? He noted that the Council established a goal for an auto district and that the City conducted specific marketing based on an auto district. He said that the Council received phone calls regarding the auto district. The Council needs to know the things that businesses seek when they look at relocating. He felt that the positive things that Morgan Hill has in place needs to be marketed and focused on rather than having a general marketing plan. He felt that before the City commences a marketing plan, the Council needs to get a better idea of what the City/community wants and needs. He felt that there are a lot of things the Council needs to work on before allocating money toward any of the plans. He appreciated staff trying to work toward a partnership with the Chamber in order to leverage dollars in the best way. However, he was not sure that the City was ready to leverage these dollars. He noted that the Council has a \$90,000 contract with the Chamber today to accomplish certain things that need to be evaluated. He felt that the Council needs to take a look at this contract. He noted that \$130,000 has been budgeted to start a new mainstream downtown program. He inquired whether this was a responsibility that the Council can take out of the contract from the Chamber so that the \$90,000 can go further toward economic development and marketing? He felt that the City has spent a lot of money in the last budget on these types of things and felt that the Council needs to evaluate what these dollars have done before taking a look at spending any more dollars on any of these projects.

Council Member/Vice-chairwoman Chang echoed some of the points made regarding what is the strategy for economic development. She noted that individuals have stated that there is an urgency in performing economic development. If the City can increase its budget from \$15 million last year to \$16.5 million and achieve a balance budget, she felt that the City was doing well. She did not consider the City being in an economic dire situation. She acknowledged that the City does have a high vacancy rate in the business park, however, she felt that this is man made. She said that the owner of the business park built it and did not anticipate the downturn of this particular market. However, she was excited about the plan. In looking at Gilroy, she sees them attracting one store after another such as Barnes & Nobel, Target, Ross, etc. She was worried about the City's future and whether some of these stores would remain in the community. She felt that the City should have something in place to make sure that the City remains sound. She said that Gilroy is clear about the businesses they want to attract. They want the big box market and big sales tax dollars. She indicated that she was one of the individuals who had a problem with an auto dealership and that she

still does. She would like the Council to study the direction and the strategy of where the City is going. She said that she would agree to volunteer her time to work with whomever the Mayor designates to work on the economic development strategy. She felt that both the Chamber and the City are good organizations and felt that the City and the Chamber should be able to work together to come up with an excellent plan; one that everyone is comfortable moving forward with. She recommended that action be deferred this evening and that the Council request staff work with the Chamber's president to work toward a plan that everyone feels comfortable with. She said that it was hard for her to spend a large amount of money on a polarized situation. She stated her support of moving forward with some direction from the Council for both groups to work together so that she can approve the economic development strategy.

Mayor/Chairman Kennedy suggested that a workshop be held between the Council and the Chamber Board to air out the issues and spend more time addressing these issues. He felt that the Council also needs to have a clear understanding of what it would like to see, noting that the Council does not have a consensus on where it wants to go.

Council/Agency Member Tate stated that Mayor/Chairman Kennedy characterized this action as making a \$500,000 decision. He noted that there has been discussion this evening about long term commitments. He felt that this would be an annual commitment and that the agreement would be evaluated at the end of each year. He felt that the marketing plan would be a positive thing. He inquired if it would be the second year that the separate tourism staff member would be hired? He felt that questions can be evaluated as the process moves along, especially if measurable goals are established up front. He agreed with the comments as stated by Mayor Pro Tempore/Agency Member Carr and what staff has suggested in terms that the Council does not have on paper the strategy for economic development. However, he disagreed that this was a long term project that would take long to accomplish. He did not object to researching the other issues raised before moving forward.

Mayor/Chairman Kennedy noted that the Chamber is requesting a five-year commitment in order to attract a marketing staff member and give them some sense of assurance that their job would be secured.

Council Member Tate stated that he would not support a five-year commitment.

Council/Agency Member Sellers felt that there was a difference between the plan and how you go about the commitment. He said that the Chamber has presented a five-year plan. The Council could state that the plan is sound and that it agrees to start with year one. The Council can review the plan in the second year to determine if the plan still makes sense and is sound. One of the most important things he tries to do, as a Council Member, is to know when not to get involved. He wanted to make sure that the Council does not feel that they are the sole arbitrators of what good economic development policies are for the community because he does not believe that the Council is. He felt

that the City has tremendous resources and that every council member is among those resources. The City Council each has strong feelings about economic development with input from the community. He felt that the Council cares enough about Morgan Hill to understand where it wants the city to go. He noted that Mayor Kennedy has suggested a workshop format or that the Council assign two council members to work with staff and the Chamber. He wanted to make sure that the Chamber is a primary player. He felt that the City is close in putting a marketing plan together and that the remaining elements are the quantifiable objectives and specifics about the goals. He recommended that the Council set a time line as to when it would like staff and the Chamber to identify all the specifics so that the individuals involved know what they have to do.

Mayor/Chairman Kennedy noted that the City Manager/Executive Director suggests the Council appoint a subcommittee to work with the Chamber to address some of the issues raised this evening, including the staff issues listed in the report, and report back to the Council with a recommendation. He recommended that a Council subcommittee evaluate the entire proposal by the Chamber as well as staff's comments on the proposal, including comments made this evening. The committee is to return with a recommendation to the Council.

Council/Agency Member Tate asked how this would incorporate setting the Council's economic strategy?

Mayor/Chairman Kennedy felt that the Council needs to discuss whether it is on the same page on its goals. He suggested that focus on economic development be scheduled on July 31, 2002.

Council/Agency Member Tate suggested a workshop the Chamber of Commerce be scheduled on July 31.

Council Member/Vice-chairwoman Change questioned whether one workshop would be enough to complete the process, noting that a set of goals would need to be established and priorities identified.

Mr. Kennett referred the Council to page 16, the measurable goals page of the Chamber's marketing plan, and page 12, return on investment of the staff report. He stated that one of the things that the Chamber agonized over, in developing this plan, was measurable goals. He did not believe that the Chamber did well on this. Yet, in a few days, some of the answers sought were turned over to the Chamber working closely with staff. He felt that the Economic Development Committee (EDC) and staff can work well. He referred the Council to page 28 of the marketing plan relating to the Director of Marketing Communications. He stated that part of the proposal of hiring and directing this individual, philosophically, is proposed to be a part of an EDC executive board made up of two council members, two city staff members, president of the EDC as well as the Chamber Executive Director. He proposed that the Council continue with its idea of a workshop. In the mean time, the EDC can start the process of further defining the direction of economic development for the City. He further recommended that the Council/Agency use a 60-day time frame to bring a plan back that

would be approved by staff, the Chamber and the Council.

In response to Council Member/Vice-chairman Chang's inquiry, Mayor/Chairman Kennedy felt that 60-days was sufficient time for the EDC to return to the Council with a proposal.

Council/Agency Member Sellers felt that a six-member Committee would formulate the time frame. In his four years on the Council, he felt that the Council did things well and some things not as well. He did not want the Council to wallow in the minutia and get over its head. He felt that the Council does best when it looks at the overall picture and tries to set a broad direction. He felt that the Council has done a good job about giving a broad economic development picture over the past years. He felt that the Council tends to have a consensus on the major economic development issues that come before it, as a rule. He recommended that the committee go off and try to identify these based on what the Council and the community has come to a consensus upon over the past few years. The Council can review the proposal and identify things that were missed and identify the emphasis versus having the Council trying to come up with the entire list as this would bog down the process. The Committee can return to the Council and present their collective list and outline based on the Council's comments on economic development priorities. He felt that this process could be accomplished in 60-days.

Council Member/Vice-chairman Chang felt that the Council needs a forum to discuss the overall economic goals.

Mayor Pro Tempore/Agency Member Carr said that he was having trouble asking staff to go off and develop a plan when they do not know what the Council wants. He agreed that the Council should not get into the minutia and felt that the Council needs to stay at the policy level. However, he did not know what the economic development strategy is for the City, noting that the Council has not addressed economic development. He stated that when this issue was first addressed, he attended workshops sponsored by the Chamber of Commerce. He was hoping that the Council would be getting out of the process that was started last fall when the economy first took a dive. Staff recognized this fact and came to the Council with a plan on how to reduce expenses in order to make the budget. He was hoping that the Council would be receiving suggestions on what the Council can be doing, as a city, in aiding economic development from these work sessions. This could be accomplished through changes in the zoning ordinance, providing different incentives, or simplifying the permit process. He noted that the Chamber took the direction of putting together this marketing plan. However, this was not what he thought the Council would get out of this process. He did not believe that the Council has given direction on what needs to take place. He stated that he has trouble asking staff to go do something without any direction on what they out to do.

Mayor/Chairman Kennedy recommended that the Council establish its goals and policies on July 31 and that staff be directed to return at that time with some options for Council consideration.

Council Member/Vice-chairwoman Chang noted that the City Manager would not be in town on July 31 and inquired whether there was an alternative meeting date? She suggested that the workshop be scheduled for August 21.

Council/Agency Member Tate recommended that in the meantime, the Council commit to filling out a questionnaire and getting its thoughts together.

**Action:**      *On a motion by Council/Agency Member Sellers and seconded by Council Member/Vice-chairwoman Chang, the City Council/Redevelopment Agency unanimously (5-0), **Directed** staff to schedule a workshop on August 21 on establishing economic development and tourism, using the existing plan as the framework under which the Economic Development Committee to establish a proposal.*

Council Member/Vice-chairwoman Chang stated that the Council does not need to include the tourism portion because the General Plan identifies three goals for economic development, noting that goal 3 is tourism.

Mayor/Chairman Kennedy stated that he would like to have what has already been approved by the City Council as a starting point. He said that with the information received thus far, the Council and the committee have a good packet of information to work from.



## ***City Council Action***

### **PUBLIC HEARINGS: (Continued)**

#### **18. ADJUSTMENTS TO DEVELOPMENT IMPACT FEES - Ordinance No. 1570, New Series**

City Attorney Leichter indicated that agenda items 18, 19 and 20 deal with development impact fees, user fees/service charges, and recreation division fees. She said that all three items are amendments to ordinances which are necessitated by the updates to the fee schedules that have been proposed. However, tonight's action does not require the Council to contemplate or approve any of the fee adjustments that have been discussed as they will be discussed on July 17. She indicated that the procedural reasons for bringing these ordinances to the Council this week are for the introduction of the ordinances so that they can be adopted should the Council chose to adopt the resolutions governing the fee adjustments next week. In response to Council Member Tate's question, she indicated that the only changes being made to the ordinance is text amendments that would establish the type of fees and give the Council the authority to adopt specific fees at a later date.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1570, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1570, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.010(1)(F), 3.56.010(1)(J), 3.56.010(1)(M), 3.56.050, AND 3.56.160(1)(A) OF CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

#### **19. ADJUSTMENTS TO USER FEES, SERVICE CHARGES, AND MISCELLANEOUS UTILITIES FEES - Ordinance No. 1569, New Series**

City Attorney Leichter presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was

closed.

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1569, New Series.*

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1569, New Series by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 3.50.050(1)(C) (Schedule of fees and service charges) OF CHAPTER 3.50 (Fee and Service Charge Revenue/Cost Comparison System) OF TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING USER FEES AND SERVICE CHARGES by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

**20.      CITY RECREATION FACILITY RESERVATION PROCEDURES AND USER FEE**  
**- Ordinance 1571, New Series**

City Attorney Leichter presented the staff report.

Council Member Chang noted that it is being stated in the ordinance that the City is ". . . ensuring maximum cost recovery." She inquired whether the City was charging non profit sports organizations in such a manner that the City is receiving 100% cost recovery?

Recreation Manager Spier responded that at a rate of \$2 per hour, not taken into account the administrative processing fee, the charge is minimal cost recovery. She stated that she would have to conduct an analysis to identify full cost recovery. For commercial groups, staff was looking at \$35/hour as a comparison for rates being proposed.

Mayor Kennedy stated that it may not be appropriate to talk about ensuring maximum cost recovery as the City is not achieving full cost recovery. He felt that it would depend on whether the Council wants to focus on providing this service to the community's youth or be concerned about full cost recovery. He noted that at the last Council meeting, it was felt that the cost was a minimum amount, but yet the cost would be a hard hit on the teams such that it would be hardly worth making an issue of the fee.

Council Member Sellers recommended changing the word "maximum" to "appropriate."

Council Member Chang recommended that a one time flat fee be charged for organized sports to use the fields versus charging the \$2 per hour user fees as it would become too complicated.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1571, New Series.*

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1571, New Series, as amended, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.54 (Recreation Fees) OF TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING FEES FOR RECREATION SERVICES, INCLUDING CLASSES, FACILITIES AND ADMINISTRATIVE PROCESSING FEES, as amended (replace the word w"maximum" with "appropriate") by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **21.      SANTA CLARA COUNTY POLLUTION PREVENTION PROGRAM**

Council Services and Records Manager Torrez presented the staff report.

Council Members indicated that their schedules could not accommodate appointment to this committee.

Mayor Pro Tempore Carr indicated that he would inform Gillian Moran, Executive Director of the Cities Association, that he would be stepping down and that she could advertise this position.

Mayor Kennedy recommended that the City of Gilroy be contacted to let them know of the vacancy.

Council Services and Records Manager Torrez indicated that she would contact the City Clerk of the City of Gilroy to see if she can schedule this item for their Council consideration.

**Action:**      **No Action Taken.**

#### **22.      HOUSING TYPE DISTRIBUTION AND TERM FOR 2002-2003 MEASURE "P" COMPETITION (FY 2004-2005 AND A POTION OF THE FY 2005-2006 BUILDING**

**ALLOTMENT) - Resolution No. 5594**

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the floor to public comments. No comments being offered, the public hearing was closed.

Council Member Sellers said that he would like to place an asterisk on the second year competition because the City Council would be appointing a Measure P committee next week to review Measure P. The Measure P Committee would be returning to the Council with a ballot measure at the time the Planning Commission would be awarding building allotments. Depending on what gets approved by the voters, this would be the point of starting the changes.

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5594, Approving the Total Building Allotment and Distribution and Authorizing Measure P Competitions to be Conducted During Fiscal Year 2002-2003 for the Balance of the Fiscal Year 2004-2005 Building Allotment and a Portion of the Fiscal Year 2005-2006 Building Allotment.*

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURN TO CLOSED SESSION**

City Attorney/Agency Counsel Leichter indicated that the closed session items were those that were continued prior to the regular agenda.

**Action:**        *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the City Council unanimously (5-0) **agreed to extend** the meeting beyond 11:00 p.m.*

Mayor/Chair Kennedy adjourned the meeting to closed session at 10:55 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:12 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 11:13 p.m.

**MINUTES RECORDED AND PREPARED BY**

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**IRMA TORREZ, City Clerk/Agency Secretary**

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - JULY 17, 2002**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the meeting to order at 6:35 p.m.

**ROLL CALL ATTENDANCE**

Present: Mayor/Chairperson Kennedy; Council/Agency Members Carr, Sellers, Tate  
Late: Council/Agency Member Chang (arrived at 7:45 p.m.)

**DECLARATION OF POSTING OF AGENDA**

Deputy City Clerk/Deputy Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

***City Council Action and Redevelopment Agency Action***

**CLOSED SESSION**

City Attorney/Agency Counsel Leichter announced the following closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION: CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments being offered, the public comment was closed.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:36 p.m.

### **RECONVENE**

Mayor/Chairperson Kennedy reconvened the meeting at 7:05 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that there was no reportable action taken in closed session.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairperson Kennedy, Glenn Ritter led the Pledge of Allegiance.

### **CITY COUNCIL REPORT**

Mayor Kennedy addressed the following: 1) he was an ex-officio member of the Morgan Hill Community Health Foundation, which was formed at the initiation of the City Council with a mission to restore medical services in Morgan Hill. Last Monday's meeting provided some good news for the community in that the medical office building at the St. Louise Hospital site will be reopening in August. There will be a minimum of two doctors on staff when it opens with the promise of the return of several doctors previously had offices there. He reported that the Morgan Hill Community Health Foundation is also working with the Daughters of Charity to restore medical facilities in Morgan Hill, and specifically will be appointing a Citizens Advisory Board to provide recommendations on how the existing facility will be used. He stated the Morgan Hill Community Health Foundation has a broader roll of looking at the overall healthcare needs of the City. He stated that there was a recent announcement of the discontinuation of weekend operations by the San Jose Medical Group, noting that this was the only urgent care facility in Morgan Hill. He has asked the Morgan Hill Community Health Foundation and the Daughters of Charity to look into this issue and to let the public know where they can go for acute care needs on weekends in Morgan Hill.

### **CITY MANAGER'S REPORT**

City Manager Tewes indicated that this is day 18 without a passage of a State budget. This is a concern to Morgan Hill and other local government agencies since there is a potential for the local budgets to be upset by the actions of the State legislature. He reported that the City of Morgan Hill has closed their fiscal year budget as planned on June 30. He stated that the information on property tax rolls has been received. He indicated that the Transient Occupancy Tax (TOT) levels are still below what they were two years ago, but are in agreement with projections made by staff. He stated that as long as the State's decisions does

not create an impact, the City will be in good shape.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter stated that there was no report to the Council this evening.

### **OTHER REPORTS**

No other reports were presented.

### **PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the meeting to public comment on items not appearing on this evening's agenda.

City Clerk Torrez, on behalf of Eileen Kennedy, presented Mayor Kennedy with balloons and happy birthday wishes from Mrs. Kennedy, his nieces Madison and Hannah, and all City staff. She also presented him with a gift of a handmade Afghan from Mrs. Ida Robinson.

Mayor Kennedy thanked Ms. Torrez, his wife and nieces, and everyone for their good wishes. He especially thanked Mrs. Robinson for her gift, and noted that Mrs. Robinson had asked him about being able to watch the tape of the 4<sup>th</sup> of July Parade on television. Mayor Kennedy requested that this tape be broadcast for public viewing.

City Manager Tewes noted that Charter Communications, in response to requests from citizens, is going to be able to provide both Channel 4 and the Warner Brother lineup. This should occur in mid-August.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that item 4 be pulled from the consent calendar as he would need to abstain from this item. He also pulled agenda item 8.

Council Member Sellers indicated that he has a question regarding agenda item 1 and that he would need to refrain from voting on item 3.

**Action:**        *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 1, 2, 5 through 7, and 9 as follows:*



**1. PRELIMINARY JUNE 2002 FINANCE & INVESTMENT REPORT**

**Action:** Accepted and Filed Report.

Council Member Sellers inquired if the last quarter reported had an increase in Transient Occupancy Tax (TOT) and how this quarter compared to the previous quarter?

Finance Director Dilles indicated that the report only reflects three quarters and does not reflect the fourth quarter. He stated that the fourth quarter of the TOT would be paid at the end of July. Therefore, staff has not yet estimated nor included the information into the preliminary year end report. He felt that staff's projections are close, based upon what he has been reading about countywide occupancy rates and room rates. Staff is still projecting a 36% drop in TOT revenue this fiscal year compared to last year.

Council Member Sellers requested that future Finance & Investment Reports present the information by quarters as well as information for the entire year so that the Council can monitor the progress of the economic recovery.

**2. ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR BUTTERFIELD BUSINESS CENTER, LLC - Resolution No. 5595**

**Action:** 1) Adopted Resolution No. 5595, Accepting the Subdivision Improvements Commonly Known as Butterfield - South Bay Development Company; and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.

**5. AMEND PROFESSIONAL SERVICES CONTRACT FOR PRELIMINARY ARCHITECTURAL DESIGN OF THE COMMUNITY INDOOR RECREATION CENTER**

**Action:** Approved the Scope of Work From Noll & Tam Architects for Additional Preliminary Architectural Design Services in an Amount Not to Exceed \$21,835 and Authorized the City Manager to Amend the Existing Professional Services Agreement.

**6. COMMUNITY AND CULTURAL CENTER PROJECT JUNE CONSTRUCTION PROGRESS REPORT**

**Action:** Information only.

**7. DEVELOPMENT IMPACT FEE INFLATIONARY AUTOMATIC INCREASE**

**Action:** Took No Action.

**9. YEAR END REPORT ON 2001-2002 WORKPLAN**

**Action:** Accepted Report.

**3. EMERGENCY AUTHORIZATION FOR STORM DRAIN REPAIR/REPLACEMENT IN KEYSTONE AVENUE**

Council Member Sellers indicated that he would be abstaining on agenda item 3.

**Action:** Council Member Tate made a motion, seconded by Mayor Pro Tempore Carr, to: 1) Adopt

*Resolution No. 5596, Declaring the Need for This Emergency Expenditure; and 2) **Approve** Expenditure of \$16,262 From the 2002-03 Public Works-Streets Division Operating Budget to Fund an Emergency Storm Drain System Repair/Replacement on Keystone Avenue.*

City Manager Tewes recommended that this item be held to later on the agenda as the action would require four affirmative votes.

**Action:** *Council Member Tate **withdrew** his motion and Mayor Pro Tempore Carr **withdrew** his second.*

**Action:** *It was the consensus of the City Council to **defer** item 3 to later on the agenda when Council Member Chang arrives.*

**4. APPROVAL OF SUPPLEMENTAL IMPROVEMENT AGREEMENT MORGAN HILL DEVELOPERS LL-TRACT 9345 (EAST DUNNE AVENUE MEDIAN IMPROVEMENTS)**

Mayor Kennedy indicated that he would be stepping down from item 4 because he resides within 500 feet of this project.

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council, on a 3-0-1 vote with Mayor Kennedy abstaining and Council Member Chang absent: 1 **Appropriated** \$92,830 From the Current Year Unappropriated Traffic Impact Fee Fund for this Reimbursement; and 2) **Authorized** the City Manager to Sign a Supplemental Improvement Agreement for Construction of the East Dunne Avenue Median Improvements by Morgan Hill Developer, LLC - Trovare Subdivision.*

**8. APPROVAL OF RIGHT-OF-WAY PURCHASE AGREEMENTS FOR BUTTERFIELD EXTENSION, PHASE IV PROJECT (APN: 817-57-012)**

Mayor Kennedy inquired whether the current schedule is consistent with the CIP schedule that was prepared?

Deputy Director of Public Works Bjarke responded that this project is on schedule. He addressed the remaining acquisitions. He stated that after tonight's action, the City would have four more parcels to acquire. He indicated that with three parcels, the City is close to concluding negotiations. He said that the fourth parcel still has some negotiations. Should the City be able to start construction next spring, the City would be on schedule with the CIP. He clarified that the right of way purchases would extend Butterfield Boulevard from San Pedro to Tennant Avenue with an estimated completion in fall of 2003.

Mayor Kennedy felt that it was important for citizens to know that this project would extend and allow for the completion of Butterfield Boulevard from San Pedro to Tennant Avenue.

**Action:** *On a motion by Mayor Pro Tempore Carr, and seconded by Council Member Sellers, the*

*City Council, on a 4-0 vote with Council Member Chang absent, **Authorized** the City Manager to Execute Purchase Agreements With the Owners of APN 817-57-012 for Total Compensation of \$329,072 Plus Escrow and Closing Costs for the Acquisition of This Property.*

Council Member Tate commended staff on the amount of work that is represented in this and other Consent Calendar items approved at this meeting. These reports reflect the large amount of work being accomplished by staff, and he wanted to compliment them. He also noted that citizens can access a great deal of information on the City's new web site, and can bookmark it at [www.morgan-hill.ca.gov](http://www.morgan-hill.ca.gov). He said that citizens can keep track of what is happening in the City, as well as view the progress on the Community Center as it is being built.

### ***Redevelopment Agency Action***

**Action:** *On a motion by Agency Member Tate, and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Vice-chairwoman Chang absent, **Approved** Consent Calendar Item 10 as follows:*

**10. CONSULTANT AGREEMENT WITH BENCHMARK**

**Action:** ***Authorized** the Executive Director to Execute a Consultant Service Agreement with Benchmark, for FY 2002-2003 in an Amount Not to Exceed \$520,000, to Provide Project Management Services and Lead Testing for Housing Improvement Programs.*

City Manager/Executive Director Tewes informed the City Council that it has an adopted policy that public hearings are to begin at 7:30 p.m. Therefore, he recommended that the Council/Agency move to agenda item 17.

**Action:** *By consensus, the City Council **agreed** to consider agenda item 17 at this time.*

### ***City Council Action***

**17. APPOINTMENT TO THE MEASURE P UPDATE COMMITTEE**

Director of Community Development Bischoff presented the staff report.

Council Member Sellers indicated that the City received a number of qualified individuals interested in serving on this committee. He stated that the size of the proposed committee was larger than what staff recommended. However, the Council committee felt that it was important to be both reflective of the community and to take advantage of the significant contributions individuals would be making, recognizing that different individuals would bring unique perspectives. He indicated that he and Council Member Chang are pleased with the 19 individuals being recommended to serve on the Measure P update committee.

Mayor Kennedy opened this item to public comment. No comments were offered.

**Action:**      *On a motion by Council Member Tate, and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Accepted** the Council Subcommittee Recommended Appointments to the Measure P Update Committee Per Exhibit "A."*

Council Member Sellers informed the Council that the Council subcommittee refrained from making any recommendations regarding appointment of a Council chair and vice-chair. It was felt that this was a decision to be made by the five council members.

Mayor Kennedy stated that he spoke with Mayor Pro Tempore Carr and Council Member Tate regarding their possible appointments to this committee. He indicated that both have agreed to serve as the Council representatives. With respect to serving as chair and vice-chair, he felt that this warrants discussion.

Council Member Tate recommended that the Council appoint the Council committee members and that the selection of chair and vice-chair be determined at a later date.

**Action:**      *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Chang absent, **Appointed** Mayor Pro Tempore Carr and Council Member Tate to Serve on the Measure P Update Committee.*

Council Member Tate requested input from the Council Members regarding downtown and residential development. He indicated that at the downtown workshop held last Saturday, the Downtown Committee received a strong statement by a Planning Commissioner that residential development in the downtown should be exempt from Measure P. He recommended focus be given to this issue.

Mayor Pro Tempore Carr inquired whether the Downtown Committee could come up with a recommendation for the Measure P Update Committee to consider by fall 2002?

Council Member Sellers responded that the Downtown Committee could come up with a recommendation with this regard, depending on what is defined in the fall. He stated that the Downtown Committee hopes to conclude its charge by late fall 2002. He felt that the Downtown Committee recommendations will impact Measure P and that several of the Measure P Update Committee applicants interviewed stated that they felt that it was important for the Council to set a direction for Measure P and this committee. He felt everyone is dedicated to maintaining the integrity of Measure P. He recommended that the Measure P Update Committee address some of the major philosophical issues and that if the committee, as a whole, felt that it was important to come back to the Council for further direction, they can do so at that time. He said that recommended action item 3 was placed on the agenda due to the concern that the Measure P Update Committee may have a direction or focus that was different from what the Council intended or that the scope may not be as broad as the Council intended. He recommended that the chair to this committee direct this discussion and that it be brought back to the Council, if need be.

Mayor Kennedy stated his support of higher density in the downtown area and near the transit

center/Caltrain station to help keep the downtown vibrant. He felt that it was important that the Measure P Update Committee address this issue. He noted that Council Member Sellers focused on the downtown when he hosted the Housing Summit last year, specifically some of the good ways that housing can be built into a downtown and make it alive and vital. He stated his support of these efforts and hoped that the Committee would bring back good recommendations. He indicated that there is a large segment in the community that is concerned about the City growing too fast and losing its sense of character/identity and small town qualities that are valued. He felt that there needs to be a balance that is worked out on this issue.

### ***City Council Action***

#### **11. ANNEXATION AND ZONING AMENDMENT APPLICATIONS, ANX-02-02 AND ZA-02-02: COCHRANE-BORELLO II**

Director of Community Development Bischoff presented the staff report and requested that the public hearing for this item be continued to July 31, 2002 as all citizens are required by law to be advised of this meeting and the public hearing. He indicated that by the July 31, 2002-date, all flaws in the public noticing would be remedied.

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:**        *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Continued** the public hearing to the Special City Council Meeting of July 31, 2002.*

#### **12) APPEAL OF SUBDIVISION APPLICATION SD 01-04: McLAUGHLIN-JONES**

Director of Community Development Bischoff presented the staff report. He informed the City Council that staff has been in contact with the appellant and the appellant's attorney. He indicated that the applicant is requesting a further extension of time on this matter to allow further dialogue with staff in the hope that the appeal would not be necessary. He recommended that the public hearing be continued to August 21, 2002.

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:**        *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Continued** the public hearing to August 21, 2002.*

#### **13. ADJUSTMENTS TO DEVELOPMENT IMPACT FEES - Resolution No. 5592**

Finance Director Dilles presented the staff report. He indicated that the City's consultant, Maximus, recommended various adjustments to the existing impact fees and also proposed two new impact fees: 1) fees for the community and recreation center and 2) open space. He stated that staff is not recommending

implementation of these two fees at this time. However, staff proposes that staff be directed to return within a year when staff has more information regarding sports complex/sports fields cost analysis. He informed the Council that staff still recommends that the development impact fees be implemented effective January 6, 2003. However, for residential projects, developers should be allowed to prepay at the existing rates prior to January 6, 2003 if they have Measure P allotments with additional incremental fees for subsequent extensions. For commercial and industrial projects, staff recommends that applicants who submit a complete set of building plans for plan check also be allowed to prepay impact fees at existing rates. However, they would pay incremental impact fees if their permits are extended.

Mr. Dilles indicated that the Council requested information regarding shell buildings. He said that where tenant improvements have not been installed, staff looked at this and evaluated the situation. Staff believes that there is a potential of \$1 million in loss revenues if developers were allowed to pay the existing rates for these situations if given a reasonable period of time such as through June 2004. There was a question regarding the fiscal impact of phasing development impact fees over time. Staff looked at a three-year period and that staff determined that the City would lose \$1.8 million in development impact fees in the residential area and \$1 million in commercial and industrial for a total of \$2.8 million. Another question related to the fees and whether they were adequate for the life of the General Plan. He indicated that the fees were adequate, however, staff knows that it would need to review these and report back every five years. He acknowledged that it has been seven years since staff came before the Council with adjustments. Regarding the question whether comparisons between cities are meaningful, he stated that other cities use bond measures, Mello Roos Districts, Redevelopment Agency proceeds or other revenue sources to cover some of the impacts that would otherwise be charged to development impact fees. He indicated that in the letter from the legal firm of Miller, Starr and Regalia, the attorney looked at traffic impact fees and compared the proposed fees for Morgan Hill to the fact that it is less than other cities and non-existent in a number of other cities. He said that staff was able to confirm all the numbers and have confirmed that some of the cities do not charge development impact fees for traffic. However, staff believes that these cities are built out such as the Cities of Campbell and Mountain Views. Therefore, staff believes that this is a significant reason why development impact fees are not being charged.

Mr. Dilles indicated that there was another question relating to what can be held off while the economy improves. He said that every delay takes away money from city projects. There was a question raised regarding revenues. He referred to the letter from Miller, Starr, and Regalia which indicates that one of the concerns they have is that the study has not properly included revenues that would be available to pay for the projects that would otherwise be paid for by development impact fees. It is staff's belief that it has looked at all revenues, noting that the City has reduced traffic impact fees by \$10.8 million for VTA monies staff believes the City would receive. In addition, staff has removed portions of projects from the list of traffic improvement projects to be funded with the impact fee because they are funded by Redevelopment Agency funds. He stated that it is staff's belief that it has addressed the known revenue streams. For the City to guess other revenues that it may or may not receive would be speculative.

Council Member Tate noted that staff has indicated that with phasing, the City would be exposed by \$2.8 million. He inquired if this was a three-year phasing option and whether this was the only phasing study conducted? He inquired whether a two or four-year phasing was analyzed?

Mr. Dilles responded that staff conducted a three-year analysis. However, staff has numbers that can be used to conduct a two or four-year loss.

Council Member Tate requested that staff identify the loss for a 2 and 4 year phasing.

City Manager Tewes said that there is no precise estimate of revenue loss. He indicated that staff knows what the rates would be under certain assumptions. However, staff does not know the level of activity that would occur.

Joe Colgan, Maximus, addressed a few of the points made in the letter from Miller, Starr and Regalia. There was an argument made in the letter that some cities have lower fees than those proposed for Morgan Hill and therefore, the city should adopt lower fees. He noted that Mr. Dilles addressed some of the reasons why different cities have different fees such as different local conditions, different facility needs, different cost recovery policies and different funding strategies. He said that there may be other funding sources that can be used such as a Mello Roos District instead of impact fees. He noted that there are cities that have fees higher than those proposed for Morgan Hill. He did not believe anyone would suggest that this is the justification for Morgan Hill to adopt higher fees. He said that the letter claims that the nexus study is flawed in two respects:

1) The study does not take into account that existing development is likely to benefit from the improvements to be funded by the impact fees. He said that these improvements were designed to fulfill the needs of future development in order to maintain the level of service specified in the Circulation Element. The argument is that these facilities would tend to increase the level of service for the existing community and therefore, the existing community should pay for this benefit. It is known that these projects are needed to keep the level of services from decreasing. Any benefit to the existing community would be incidental and therefore, the City is not required to account for them, if in fact it does exist.

2) The nexus study does not account adequately for funding from other sources, specifically for traffic impact fees. He stated that street improvements being funded by Redevelopment Agency funds are not addressed in the study and that these are not included in the cost of the traffic improvements. He recognized the potential for some VTA funding for two of the major projects on the list. He said that there is reasonable certainty that this funding will come through because these projects have been designated for funding at some time in the future. Beyond this, any contribution of outside funding would be highly speculative and that he did not believe that the City would be required to address it since it is not known. In the future, should something like this occurs and more money becomes available, he stated that the City may want to take another look at the fees and determine whether they need to be adjusted. He addressed the claim that the traffic impact fee is calculated on a site specific or a case by case basis. He said that the legal standards of review would be higher if this was the case, however, it is not. The fee being proposed and recommended would apply to all future development in the City. The specific amount to be charged is determined based on the impact of a specific project when it becomes known. He noted that this is not known until the project is presented to the City. At that time, the per trip fee would be applied to the trip generation rate for the particular project. He said that this is not something that is determined randomly by staff but is based on the Institute of Transportation Engineers Trip Generation Manual that has detailed information on a wide range of different types of development and is based on 100+ studies from around

the country indicating what the trip generation rates for specific types of commercial development and other types of development. The fee is not a case by case fee except in the sense that the final determination of the amount has to weigh the presentation of the project so that the specific impacts are determined. The letter suggests that it would be better to have a schedule similar to other cities that assign particular fees for particular types of development. He said that the City could do this but that it would be a long schedule.

Mayor Kennedy said that after he read the letter from Miller, Starr and Regalia, he looked at the work in Mr. Colgan's report and noted that the major traffic improvement projects that were of regional consequences would typically be reviewed by the VTA. Mr. Colgan identified a 50% regional funding from other sources, assuming a 50% match from VTA as a generous assumption. He said that the fact that this project caused the need for this improvement that it was important that one pays for the need that they created. After hearing what Mr. Colgan has stated and having gone back and studied his report in greater depth, he agreed that the traffic impacts, as stated, are as good or as accurate as the City would get.

Mr. Colgan said that should the City were to choose to adopt fees based on broad categories of commercial development and standardize those, the risk is that some projects with lesser impacts would be paying higher fees than justified by the amount of traffic they generate while others might be paying less. This is the reason he recommended assessing the impacts on a case by case basis at the time a project is presented.

Council Member Sellers felt that it would benefit businesses, as a whole, to have a more individualized approach and not to codify the impact fees. Regarding impact fees, whenever it is possible and when the City has a reasonable expectation that there will be reference made to VTA or other known funds, he recommended that they get incorporated. He inquired if it would be possible to try to account for impacts down the road? He further inquired if there was a way to gage tertiary or further out impacts?

Mr. Colgan responded that it is within the City's right to be generous and assume that there may be additional funding available from other regional sources or identify sources in the future. This would have the effect of reducing the fees at the time. He said that the City can do this as long as the City does not make the assumption that it would increase fees beyond what can be justified. He stated that this would be a policy decision that the Council would need to make.

Council Member Sellers stated that the City needs to make sure that it is at a point that it has some reasonable assumptions that it can make that the funds would be coming on line. Otherwise, the City would have impacts that it would have to cap otherwise.

Mr. Colgan stated that it is important that projects be paid somehow. If the City does not collect enough impact fees to cover the share that is attributable to future development, the Council would need to determine where the money will come from.

Mayor Kennedy noted that Mr. Colgan made a very important assumption relating to the regional traffic passing through the community. He said that Mr. Hogan assumed that Highway 101 will be able to handle all of the regional traffic, noting that this is currently not the case. He said that traffic is a lot worse



because Highway 101 is not handling the traffic flowing through the community. Therefore, the assumption is in favor of lower impact fees, assuming that Highway 101 will handle all of the traffic. In response to the criticism in the letter from Miller, Starr and Regalia, he felt that Mr. Colgan's assumption is even more in favor of a developer's perspective on impact fees than it is on the City because the City currently has adverse impacts resulting from regional traffic and Mr. Colgan's assumption is that this is not going to be the case.

Mr. Colgan stated it was his understanding that the system designed in the Circulation Element of the General Plan is based on the assumption that Highway 101 will handle the regional traffic. Therefore, there would be no capacity included in the local system except for one or two arterials such as Butterfield Boulevard that were designed to handle some pass through traffic. He felt that portions of the roadways intended for this purpose were not included in the costing of the projects.

City Manager Tewes said that the assumptions used with respect to land use, Circulation Element and impacts were not unique assumptions derived solely for the purpose of this study. He stated that these come out of the adopted General Plan Policy Document. The assumptions mentioned about the widening of Highway 101 to a sufficient capacity to handle regional traffic was derived from the General Plan Policy Document.

Mayor Kennedy opened the public hearing.

Chris Carrig, representing for Thoraldson Family, indicated that he is the author of the letter being discussed this evening with Miller, Starr and Regalia. He indicated that the Thoraldson family has strong concerns about marketing their properties to commercial developers in light of the proposed fees and was commissioned to look at fees in other cities. He informed the Council that the Thoraldson family has a potential buyer for one of their properties who is informing them that this city is pricing him out of the market on the property, particularly as they relate to traffic impact fees. He concurred that there are different ways to raise revenues to pay for public infrastructures. It is the general consensus among cities that commercial and industrial development are beneficial land uses and not a drain on resources. He said that as a rule, you see substantially lower fees for commercial and industrial development than any other types of development. He said that the Thoraldson family is concerned about their property and the well being of the City's coffers. Regarding the nexus study flaws that he mentioned, he stated that there is a clear benefit to existing residents from the 35 projects. Out of the 35 projects on the list, 33 of them are 100% allocated to growth. If levels of services are approved for existing residents when the infrastructure is built, then they are receiving a benefit for no charge at the expense of growth. He stated that this was not constitutional nor legal. It would be the City's burden of proof to show that the residents are not receiving a benefit. He suggested that it would be appropriate to reduce the fee by 10-15% across the top as a fair shared allocation to existing residents for the benefits that they would receive for the \$100+ million dollar infusion of infrastructures. He felt that there should be an allocation to existing growth, one that is up to the consultant to establish in the first instance and felt that it was the City's burden to prove this. Also, the Redevelopment Agency funds that were suggested that would develop over the years to funnel toward infrastructures would offset the impact of redevelopment projects, and not growth-based impacts.

Sunday Minnich stated that at the June 26 Council meeting, the Chamber of Commerce and Home Builders Association requested additional time to come back with a joint recommendation. She indicated that since that time, the Chamber of Commerce, along with the Home Builders Association, agreed that there were differences that needed to be addressed individually. Therefore, the Chamber would be addressing the commercial and industrial aspects of the proposed changes and that the Home Builders Association would be addressing the housing aspects of the proposed changes. She felt that the timing of the proposed changes comes at a downturn in the economy where competition for new business development is high. She stated that the proposed changes nearly double the development fees and would effectively price Morgan Hill out of the commercial and industrial development business. The Chamber fears that developers are extremely likely to find it more attractive to locate in other nearby jurisdictions where the development impact fees are substantially lower. The Chamber also fears that increasing the fees at this time would bring negative publicity to Morgan Hill and send a message that Morgan Hill is not open for business. She stated that the Chamber understands, appreciates, and supports the City's efforts to make Morgan Hill a better place to live and work, but felt strongly that if the impact fees are adopted at this time, development in Morgan Hill would be stifled and that the City would not benefit from new or existing fees because the City would be priced out of the current market. She indicated that the Chamber requests that the Council postpone the adoption of the commercial and industrial portion of the proposed development impact fee structure until a thorough analysis of what the fees' impact would be are studied in more detail. The Chamber also supports the Home Builders Association's recommendation to phase the increase in fees for housing development.

Robert Eves, Venture Corporation, updated the Council on the aquatics center. He indicated that the Olympic Committee has visited San Francisco, the East Bay and Stanford to work on the bid by the San Francisco Bay area to bring the Olympics to the area in 2012. He indicated that he spoke with Ann Cribbs, director for the Bay Area Sports Organizing Committee. He indicated that his wife, Jan Yanahero, is on the board of directors of the Olympics Committee who has been actively involved. He noted that the competing cities are New York, Houston, the San Francisco Bay Area and Washington, D.C. After the meeting and the tours that concluded two days ago, Charlie Moore, chairman of the U.S. Olympic Committee, stated that the Committee's bid to bring the Olympics to the Bay area was accepted as a very fine bid and has no shortcomings. He indicated that Stanford University would be the home of the opening and closing ceremonies with the competition focusing on Stanford, Santa Clara, San Jose and Berkeley. He indicated that in September, the Selection Committee will narrow the list to two cities and that a final choice would be made in November. He stated that he spoke this morning with Ms. Cribbs about Morgan Hill's aquatic center. Ms. Cribbs indicated that should the Bay area be selected, Morgan Hill would be used as an aquatic training center and a practice facility. He further indicated that Ms. Cribbs indicated that Morgan Hill may wish to establish a sister city relationship with the selected winter Olympic city. He stated that Venture Corporation is very proud to be a contributor of money to help Morgan Hill launch this new center and is eager to see it come together.

Mr. Eves stated that he realizes that cities need revenues in order to survive. However, as to the adjustment of the traffic impact fee or the overall development impact fees, he felt that the timing of any adjustments to the fees would be terrible. He raised three points: 1) the proposed fee structure needs to be re-evaluated to reflect the current business world we are in today; 2) the traffic impact fees should recognize the companies that are both installing public improvements and paying traffic impact fees; and 3) given the

current economic climate, all discussion about fee increases should be delayed for at least a year.

Mr. Carrig agreed that the case by case analysis is perhaps the most fair but felt that it was impractical in the sense that you have to perform the analysis from scratch on every project. Also, there is a legal burden of conducting a case by case analysis; that being that you are subject to the higher scrutiny and more strict test of the Nollan, Dolan and Ehrlic standard as set forth in his letter. He clarified that it does not have to be related to the fees but that there has to be a nexus and has to be proportional to the exact impact. When the City goes into court at a later time with a business, the City is at a distinct disadvantage by not adopting broad categories. This does not mean that the City cannot adjustment within these categories, once they are adopted. He suggested that a lot of cities do this as a practical matter both for administrative convenience and to avoid potential serious litigation issues down the road. He informed the Council that the Thoraldson family own two hotels in Morgan Hill and also other properties that they would like to develop or sell to developers for commercial projects. In response to Council Member Chang's question, he indicated that he did not know the amount the Thoraldson's are asking per square foot.

Bill Puterbaugh, owner of a commercial project called "The Ranch" located on the corner of Butterfield and East Main Avenue, addressed the recommendation by staff that fees be grandfathered for a period of time. He said that based on the issue of fairness, he agreed to pay the fees. At this point, he felt that an increase in fees would act as a penalty. He said that the Ranch is about 85% complete and that he is awaiting a tenant. As the impact fees are based on use, he is awaiting to pay sewer and traffic impact fees for each use that comes in. He indicated that as of today, the Ranch has paid \$144,000 in fees to the City. Under the current fee structure, he would be required to pay another \$174,000 in impact fees for a total of \$320,000 in fees paid for a relatively small project. If the new fees are implemented, his cost would increase 43% over what he has already paid for his project. He felt that this was a substantial penalty. He requested that the Council accepts staff's recommendation to grandfather projects. He felt that the new costs should be borne by new applicants. He also felt that it was to the benefit of Morgan Hill to have existing buildings leased and eliminate graffiti and vandalism that occurs with empty projects.

Jennifer Cloonan, Associate Director of the Home Builders Association (HBA) of Northern California, stated that it has been mutually agreed upon by the HBA and the Chamber that each would return with its own separate recommendations specific in interests held by the membership. HBA appreciates the positive progress made toward reaching the goal of adopting a fair and justifiable fee structure thus far. HBA wishes to stress that the building community is ready and willing to pay their fair share of the City's future infrastructure needs, even if it means fee increases. However, with an economic downturn being felt nationally and locally, HBA requests that the Council pause and consider the impact on the community of raising home building fees 54% at this time. HBA believes that a reasonable and equitable compromise would be to consider phasing in the fees for residential buildings over a 3-5 year period. By gradually increasing these fees, the City would demonstrate its understanding of the financial pressures being faced by Morgan Hill residents today. She stated that HBA supports staff's recommendation that home builders be allowed to prepay their impact fees at the existing levels for Measure P allotments prior to January 6, 2003. HBA respectfully requests that the Council support the preference of Morgan Hill home builders who desire to have fee levels locked in when they are vested and that fees be paid upon occupancy of the units.

Dick Oliver, Dividend Homes, concurred with the comments expressed by Ms. Cloonan. He further clarified that it is being requested that fees are locked in when vesting tentative maps are approved. He indicated that home builders recognize the need for the community to increase the fees in order to pay for the infrastructure that benefits home builders and home buyers. He stated that home builders would agree to pay its fair of fees. He requested that developers be allowed to prepay fees by January 2003. If not, he requested that home builders be allowed to phase the fees over a 3-5 year period.

Bruce Myers, Pacific Union Homes, addressed his project located on East Dunne Avenue, indicating that his project is phased over a three-year period. He requested that pre payment of fees be considered as part of these fee increases. However, he noted that there is a provision that should a Measure P allotment be extended, the prepayment is waived and that the current fees at the time would need to be paid. He said that it would be likely that he would be back before the City Council for an extension. He is hoping that he would not be penalized should he seek an extension due to market conditions and a slow absorption rate. He indicated that Measure P forces developers to build homes at a time that the market cannot absorb the homes. He requested that he be allowed to prepay fees that would allow him to move forward with the project through build out.

Carolyn Hipp, Warmington Homes, thanked the Council for its consideration of on a three-year incremental fee increase. She requested that a two, three and four year fiscal analysis be performed. She addressed the storm drain fund and the capital improvement fund, noting that both of these fees are proposed to be increased by 71% and 77%. She stated that it is a Measure P opportunity to contribute \$1,000 toward the storm drain fund and \$1,000 for the capital improvement fund, both offered through Measure P and are voluntary contributions. She indicated that she inquired about the mathematical computation of the fee increases in these two funds and whether consideration was given to looking at the amount that has been contributed by developers through Measure P in the storm drain and CIP funds. She indicated that the answer she was given was that these fees, as collected, were placed in a discretionary capital fund and therefore would not be considered additional revenue to offset fees or be used in the analysis of these fees. She inquired if it would be possible to ask how much money has been placed in the discretionary capital fund and whether it was significant enough to take another look at the proposed fee increases as proposed this evening.

There being no further comments offered, the public hearing was closed.

City Manager Tewes indicated that development impact fees have an impact on the economics of development projects. He said that staff tried to be mindful of this in its recommendation while still being mindful of the City's obligation under the General Plan to mitigate the impacts of growth. He noted that several arguments of fairness were presented this evening in that fees should be phased in. There was an argument that it would be fair not to adopt the fees at all at this time based on the economic climate. It was stated that it would be fair to reduce the fees to a different level than is being recommended. It was also stated that it would be unfair for developers to pay double fees because of requirements specific to their projects that they also install improvements. He stated that staff's recommendation is for the Council to approve fees that are the maximum lawfully allowed subject to the adjustments being suggested (e.g., credit for streets and traffic). He said that it would be possible to adopt any of the proposals to the capital improvement program (e.g., phase fees over a longer period of time, delay or defer increasing the fees)

with consequences . There would also be consequences for the developers themselves. He stated that it would be possible to reduce the recommended fees to a lower level with a consequence that either the community experience a lower level of services or the community would have to come up with more money. It would be possible to go back to the days when development projects, specifically large commercial projects, would be required to install all of the community level improvements rather than contribute to a comprehensive fee system as a way of mitigating their impacts. Regarding the stranded cost issue, staff is recommending that there be a delay on the implementation and grandfathering projects. He noted that staff offered other options for Council consideration.

City Manager Tewes indicated that there were some questions raised whether or not the \$60 million list of traffic improvements were truly caused or related to growth. He stated that it is staff's belief that traffic improvements are based on the analysis of the General Plan and the Circulation Element in order to handle the increased capacity needed by new development. Without this increased capacity, the community would experience lower levels of service on the traffic system. If development does not pay for itself, the existing community would pay for it with lower levels of service or the existing community would have to come up with other resources in order to meet the capital fees. He said that the Council has adopted a master plan for the sanitary sewer system that suggests the need for significant enhancements in the capacity to treat and dispose wastewater. If new development does not pay its fair share of the capacity, then the finance of the capacity would result in higher user rates for the existing community. Regarding Ms. Hipp's question relating to voluntary payments under Measure P, staff has indicated that these funds are voluntary and are paid to gain points, noting that not everyone pays them, and they go into a fund that pays for improvements to existing storm drainage system. The funds are not totally dedicated to expanding capacity to the storm drain system. He indicated that only the impact fees provide for the expansion of the storm drain capacity.

Mr. Dilles stated that in addition, there may have been other monies that went into the funds over the years that were referenced by Ms. Hipp. He said that there is approximately \$2.9 million in the drainage fund and \$1 million in the capital improvement funds.

City Manager Tewes indicated that staff performed calculations based on assumptions. He said that the fees being recommended have different impacts, depending on the nature of the business and their size.

Council Member Chang stated that she was trying to address the fairness of how the fees are to be increased and what would be a good percentage. She noted that it was stated that rents were high but that they dropped from last year to this year from \$1.75 to less than \$1.

City Manager Tewes said that in 1995, fees were established on the basis of a committee review who recommended that the fees be adjusted every five years. He acknowledged that it has been seven years since reviewing the impact fees based on the fact that it took longer to adopt the General Plan than anticipated.

Council Member Chang indicated that seven years ago, homes sold at approximately \$300,000 and are currently selling at approximately \$600,000. Therefore, house values have increased by at least 100%. Therefore, in looking at some of the fee ratios for residential development, they appear to be fair.

However, timing may be a different matter. She inquired whether staff has a fee comparison that the Council can review as they relate to commercial and industrial development?

City Manager Tewes said that in 1995 rents were at approximately 45-75 cents per square foot. He noted that the Council has heard testimony as to the current rates from last year and what they are today.

Mayor Kennedy inquired as to the Finance & Audit Committee's recommendation relating to the shell buildings?

Council Member Tate responded that it was staff's recommendation to waive fees for shell buildings for 18 months. However, this was not the action of the Finance & Audit Committee. It was his belief that the 18 months should be a check point and not a firm deferral.

Mayor Kennedy inquired if the recommended 18-month deferral would apply to projects that have been approved as well?

Mr. Dilles indicated that staff's analysis only looked at projects that have been built. Staff looked at what would be built in the next 1½ years and what would be the worst case scenario. Staff looked at traffic and sewer and determined that it is \$1 million. He informed the Council that a 2-year phase in would cost \$1.4 million; 3 years would cost \$2.8 million and 4 years would cost \$4.1 million for all development (e.g., commercial, industrial and residential) in otherwise lost fees.

Mayor Kennedy stated his appreciation of the comments presented by property owners, developers, and the building industry. He felt that something needs to be done to address the problem of the economic downturn. He said that the City wants to encourage industrial and commercial growth. He felt that the City needs to be careful that it does not do the opposite by some action that the Council takes. With respect to residential development, he felt that a phased program as has been suggested is a good idea. He would support a three year phasing program. He stated his support of the concept of delaying the impact fees for 18 months for existing commercial and industrial buildings, including buildings that have secured building permits.

Council Member Tate said that the legal memo received from Mr. Carrig was received this afternoon via fax. He said that legal issues were raised and that he would like to receive the City Attorney's opinion compared to the opinions stated in the memo relating to the impacts to commercial and industrial development. He stated his agreement with the comments presented by Mayor Kennedy. He agreed with a three year phased approach for residential development. He said that whatever mechanism is used to freeze the rates at the appropriate cut off time could be at vesting tentative map approval. However, there is a question about how much time a developer has to respond and submit plans following vesting tentative map approval. He felt that this process needs to be worked out so that neither the City nor the developers are in control so that it is fair to all parties concerned.

Council Member Sellers concurred with the vast majority of Mayor Kennedy's comments. He felt that grandfathering makes sense. He was also struck by the comment made by staff that the impact fees should have been reviewed five years from 1995. That would have resulted in a review in 2000. He was struck

by the fact that had the Council reviewed development impact fees in 2000, there would have been fewer individuals in the audience and the Council would have been inclined to be less generous in trying to phase in the fees. He said that this is a tough issue for the City because of today's economy. He felt that the economic impact would be felt today to a more significant degree. He supported grandfathering shell building as well as projects with building permits. He supported phasing of three years for all types of development. He calculated that it would be approximately 1-3% of the total fees that would not be taken in over the course. He did not believe that the City could go higher because the cost would be borne by taxpayers and others who did not cause impacts to the community. He noted that there are legal issues that need to be resolved. He requested that if the Council has comments from the community in the next two weeks that they address the specific issues laid out. He recommended that the focus be narrowed in order to conclude discussions and take action at the next meeting and not reopen discussions.

Mayor Pro Tempore Carr noted that staff's recommendation discusses grandfathering of fees versus phasing in of the fees. He asked if staff could calculate these two fees together should the Council be interested in doing a combination on the residential side (e.g., 1.8% for the three year phase and 2.7% for the prepaid option)? He recommended that the City consider a phasing option. However, for those projects that currently have Measure P allotments, that the City look at grandfathering scenario that would allow prepayment.

Mr. Dilles said that prepayment would save applicants money if paid by January 2003. Staff would have to run the numbers to calculate both grandfathering and the prepayment scenario. He noted that the City would lose more money with the prepayment scenario. He concurred that there is a benefit to having fees prepaid and that it would cost more to complete a project later versus sooner. He said that staff calculated the three-year phasing for all types of development at \$2.8 million. The shell calculation would cost \$1 million. He indicated that the impact fees being recommended would result in \$3.8 million.

Council Member Tate recommended a three-year phasing but that an incentive be given to pay fees earlier rather than later.

The City Council discussed possible losses to the City under various scenarios.

Mayor Pro Tempore Carr noted that there was suggestion of locking in the fees for residential development at the vesting tentative map approval, payable at occupancy. He felt that payment of fees at time of vesting tentative map approval was a good suggestion with some refinements. He said that some of the impacts that need to be mitigated do not occur until the occupancy of the home.

Mayor Kennedy noted that Council Member Tate is recommending that the Council give staff direction as to what the Council wants staff to do, returning on July 31 or August 21. He supported the three-year phasing. He did not know if there was an advantage to prepayment or lock in of fees at the current rate versus phasing. He requested that the building industry provide comments on this issue.

Mayor Pro Tempore Carr supported locking in fees for those projects that have a current Measure P allotment because these individuals have performed financial performas based on their project and today's fees.

Mayor Kennedy clarified that the 18-month delay would only apply to commercial and industrial shell buildings that have been built, existing or otherwise unoccupied. The delay would apply to tenant improvements to those shell buildings. He further recommended that any shell buildings that may have a building permit that have not yet been constructed be afforded an 18-month delay. He noted that the effective date has not been discussed.

Council Member Tate indicated that he was not clear about the three-year phasing.

City Manager Tewes said that the fees cannot go into effect until 60 days after adoption and that phasing would begin on January 6, 2003.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the public hearing to August 21 and **directed** staff to address the following: return with both legal and financial impact analysis regarding issues raised; three year phasing beginning January 6, 2003; locking in home builder projects at the vesting tentative map or something that could work better (flexibility), payable at occupancy; three year phasing for both residential and commercial; grandfathering existing rates for speculative buildings that have never been occupied for period ending June 2004, this to be a check point at which point the Council might again review whether to extend the grandfathering for such speculative office buildings; and look at a combination of a prepayment option and phasing.*

## **15. CITY RECREATION FACILITY RESERVATION FEES - Resolution No. 5593**

Recreation Manager Spier presented the staff report and identified proposed recreation facility reservation fees.

Council Member Tate did not understand how an individual can figure out the direct cost for the use of the lights based on the information provided by staff.

Ms. Spier indicated that the fee for the use of lights are based on some assumptions made working with public work staff and are proposed at partial cost recovery. She said that when staff looked at the fees, staff did not look at the cost of turning on the lights. Staff looked at the \$9/hour cost to make sure that the storage shed is opened, users have access to the lights, and provide for minor maintenance and repair. She acknowledged that youth groups are helping the City in maintaining the fields but that the fees are not just to turn on the lights. She indicated that if one proposes an event that involves more than 50 individuals, a special event form would need to be submitted and that the cost would be \$125. Staff would analyze the form to see if there are any special requirements such as having music or a jump house, that may require insurance on top of the basic fee. A party of less than 50 individuals would only be charged the \$15 processing fee.

Mayor Pro Tempore Carr asked when is staffing fees charged? Ms. Spier responded that if additional city staff support is needed for tournaments, an organization would be charged based on the special request.



Mayor Kennedy opened the public hearing.

Salley Wrye, 15005 Bowden Avenue, former President for Spirit of Morgan Hill, Board of Directors Pride of Morgan Hill and a coach for Orchard Valley Youth Soccer League, stated that the proposed recreation facility fees are significant. She said that youth organizations pay and install the improvements and maintain the fields, offsetting some of the user fees. She felt that the fees that the City would be collecting would be minimal in comparison to what would be the cost to the youth being passed on. She noted that tournaments generate revenue to the City that also offset fees. She requested that the Council support its youths. She requested that all fees be waived for non profit youth groups.

Debra Grove, President of the Pride of Morgan Hill, addressed how Pride maintains the fields that they use. The impact to the organization to use the fields would be \$600 per month. She indicated that each family pays approximately \$500 to participate and that this does not include travel cost. The organization offers scholarships to players who cannot afford the fees. She expressed concern that the community wants activities for youth and felt that her organization has provided an activity at no cost to the City based on parent volunteers and sponsorship from businesses in the community. The organization is self sufficient and felt that this would be an additional burden that it cannot handle. If the City is to be charging fees, she inquired who would be policing the fields to verify user reservations? She felt that the cost for policing the field would be an added cost not being incurred by the City at this time.

Christine Giusiana spoke on behalf of the Spirit of Morgan Hill. She requested that the Council not impose the hourly fees for the use of the public parks as it would be an administrative night mare. She concurred that organizations maintain the fields regardless of whether or not the City charges fees. If charged \$2 or \$9 per hour, she did not believe the organization would receive additional benefits. If the fees are approved as recommended, it would add \$48 to \$5,000 in costs to the Spirit of Morgan Hill. She indicated that this is not a significant amount to the City but that it is to a non profit organization, one that would be passed onto the players. She requested that the Council not adopt the fees and that it not charge non profit sports organizations.

Andrea Thrappas indicated that she has played softball for 11 years without having to pay to use the fields. She has traveled to play in other cities smaller than Morgan Hill who have beautiful complexes. She indicated that the Pride softball teams maintain the fields to make the fields look decent. Now, the City wants to charge for the use of the fields that it does not maintain. She did not believe that it was fair to charge the organizations to use the fields when they are already fundraising to cover the expenses to play in tournaments throughout California.

Wes Hillman, 1070 West Dunne Avenue, a parent of three daughters who have played in the Pride and Spirit organization as well as Orchard Valley Soccer, stated that the use of fields allowed the development of first class championship teams, one that the entire community should be proud of. He stated that youth sports organizations solicit donations from small businesses to assist with expenses. He recommended that the City make its donation to the non profit youth sports organization by waiving fees.

Brian Woodson, 17363 Serene Drive, stated that as a parent, he has two daughters who have played in Spirit and Pride. He is also a coach with the Spirit organization. He stated that parents and coaches pay

for equipment out of their pockets. He opposed the fee structure. However, should the city needs to impose fees, the City needs to look at the non profit organizations and the good that they do for the City.

Wendy Hite, 15640 La Mar Drive, parent of a daughter who is just beginning in organized sports, said that she has seen the accomplishments of girls who have participated in youth sports organization. She noted that parents and the players help to maintain the fields. She felt that the non profit youth sports organization should be exempt from paying the fees. She noted that many girls go on to college and receive scholarships based on their participation in youth sports organizations.

Will Kellett, Board Member of the Pride of Morgan Hill, stated his opposition to the fees for two reasons: 1) any additional fees would be passed on to the girls and their families, limiting opportunities for participation; and 2) the administrative cost for City to collect the fees may not merit charging fees. He requested that the fees be waived for non profit groups.

Jennifer Post, 45 East Central, stated that she has been involved in several sports organizations. She said that she is a single income family and indicated that sports is a big budget item for her. Should fees be imposed, the City would make youth sports participation for the rich.

David Osuna, 195 Preservation Way, opposed fee increases.

Teri Nelson, Executive Director for the Mt. Madonna YMCA, thanked the City for the use of the facility that they are in and the use of Galvan Park. She said that the timing for coming up with fees at this time in an economic downturn could have an adverse affect on the programming that is given to the children. She indicated that any time fees come across to a non profit organization they have to put those fees into the fees charged to the public. The YMCA also uses the fields for soccer and baseball throughout the year, noting that they have 1,600 youth who participate in the program. She noted that an unspoken group is the adult sports and that fees would impact them. The YMCA is finding that because children are involved in multi sports, it is costing parents a lot more money to participate. She indicated that she is part of the Youth Empowered for Success (YES) and that this group is trying to find more after school junior high programs to get youths project-based things to do, including use of the fields. She requested that the Council defer increasing fees to another time.

Debbie Adamo stated her opposition to the fees. She confirmed that youth organization clean up fields following different community activities. If the fee is instituted, she felt that the Council would be penalizing the individuals who take the proper channels to make reservations. She stated that there are other teams out there that are not part of the reservation system. If a fee schedule is instituted, teams would not sign up and there would be arguments as to who got there first because organizations will not want to pay these fees in order to save costs. She stated that the Pride of Morgan Hill has put Morgan Hill on the map, noting that tournaments are being held. It would be hard to put money into the tournaments if organizations had to spend extra monies for user fees. Institution of user fees would result in reducing the number of youths who can participate in organized sports.

Patrick Kelly emphasized that sports are a blessing to the children in the community. He felt that children need to have more of an incentive to play, not less. He said that the poor youth in the community have

been supported by youth groups and assist in providing scholarships to those who otherwise would not have an opportunity to play. He indicated that coaches pay out of their pockets to allow those who cannot afford to participate in sports. He requested that the City not take opportunities away from youth and allow them to play in the community.

There being no further comments offered, the public hearing was closed.

Council Member Chang stated that as a parent of children involved in sports for many years, she is not used to paying for use of the fields. Therefore, it was difficult for her to look at the total fee schedule. She expressed concern with Category A, the youth non profit organizations. She stated that she would not endorse any fees that would be charged to youth sports. She also expressed concern with the proposed fees for special events for more than 50 participants, noting that it is common to take teams to a park for a team party or for birthday parties due to economics. She requested that the Council take a look at this item to see if it is possible to state that if is a family use, the fees can be lowered.

Council Member Sellers said that in the discussion under the previous agenda item, the Council discussed the development impact fees. A big part of the discussions was whether or not there is benefit accrued to the community by payment of fees. Under this item, particularly with Category A, he felt that there is a much broader benefit to the community that accrues by having the youth participate in organized sports. The residual benefits are maintenance of the fields and having youth active in these processes. He stated that he would not be supporting fees for Category A. He felt that the \$17 administrative fee per field per season may offset some of the costs. He inquired about the electricity costs. He agreed that the impact to the City, in terms of benefit from these fees, would be minimal and that the impact to the groups would be significant. He recommended that the Council make a statement as to why it would not be charging user fees for youth non profit organizations. The Council could state that because of these particular benefits to the community, it has been determined that fees should not be charged to youth groups but that consideration would be given to possibly that the City may need to charge user fees some time in the future.

Council Member Tate stated that the Council got involved with the YES initiative because 15% of the youth surveyed in the Santa Clara County state that the community does not value youth. He stated that when a community values its youth, the youth will succeed. He felt that the community has made a commitment that it values its youth. He felt that the arguments have well been presented and therefore would support Table 2, zero fees for category A.

Mayor Pro Tempore Carr said that he has heard from the YMCA and other members from non profit groups that they have worked with staff who made them aware of these fees. He said that the discussion for the Council is the use of fields for a season by a group. He noted that the City is on an aggressive schedule to build facilities in Morgan Hill. As these facilities become built, the City's budget does not allow it to subsidize their use. The City needs to look at what it will subsidize and what it will not to make sure that the Council is not giving mixed messages by telling staff when it approves the budget that it wants it achieve a zero sum budget. He recommended that the Council look at the bigger picture as the City cannot continue to subsidize all uses. He felt that there has been an expectation that has been built up over the use about the use of fields. He agreed that there is a value to the maintenance of the fields that

has taken place by youth groups. He felt that youth organization's presence on the fields deters destruction of the fields. He also felt that the Council would be setting up the expectation that it would always continue not to charge fees. He felt that the Council would be discussing user fees again with the groups using the fields in order to come up with a way that the fields would be used and maintained in a manner that would not be continued to be entirely subsidized by the City. He noted that most organizations have already collected registration fees and adopted their budgets. Implementing a fee in September would be burdensome to youth organizations. However, over a period of time, the organizations should have an expectation that there would be a fee for use of facilities in the future for maintenance. He stated that he would support the recommendation of a new fee schedule with the idea that the Council would be continuing with this discussion in the future.

Council Member Chang noted that 20 minutes ago, the Council assisted developers by waiving \$3.8 million in development impact fees and that the citizens would be paying these fees. If the Council can waive these fees, she felt that the Council could waive \$20,000 in fees for use of the fields by the community's youth.

Council Member Sellers felt that Mayor Pro Tempore Carr made an important point. He said that the fields are in better shape today than they were 10 years ago. However, maintenance of the fields still leaves a lot to be desired as they are aging and they are constantly being used. He noted that the City would be adding facilities in the next few years. This brings a challenge on how the City would pay for them. He felt that it would be irresponsible for the Council to ignore this challenge. He said that down the road, working with community groups, the City would need to figure out how to defer most or all of the costs. He felt that the time to address these fees would be when the City has new facilities that can accommodate the hundreds of kids that would use them.

Mayor Kennedy said that the Council values its youth and would like to do things to support the coaches and players in their endeavors. He concurred that the City will be building new facilities and that the City is faced with tough questions on how it will maintain them. He requested that as the City moves forward with the new facilities to be built, that youth organizations work with the City, cooperatively, recognizing that there is a limit to what the City has to the ability to do.

**Action:**        *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution 5593, establishing City Recreation Facility User Fees, using Table 2, (zero fees for Category A).*

**14.    ADJUSTMENTS TO USER FEES, SERVICE CHARGES, AND MISCELLANEOUS UTILITIES FEES - Resolution No. 5591**

Director of Finance Dilles presented the staff report and recommended that the Council limit the adjustment to fees in the planning and engineering categories to approximately 20%. He further recommended that the Council approve the building fees that are tied to the Uniform Building Code tables to full cost recovery, using the 1997 UBC tables, the table used by most communities. He indicated that should these fee increases not be adopted as recommended, it would impact the Community Development budget. He stated that the new fees would bring in approximately \$43,000 per month to the Community

Development funds that are associated with the recommended increase.

Mayor Kennedy opened the public hearing.

Bruce Myers, Pacific Union Homes, indicated that he would start work on the median work tomorrow. He said that he is in the process of building a new model complex. He stated that he is moving forward with the project but is now facing the building permit fee increase as well as the development impact fee increase. He said that he can wait to pull permit and pay the higher fees and be penalized by the fact that the market demand does not exist, or he can try to pull the building permits and try to keep them alive by performing just enough construction to keep the project active. He felt that this defeats the purpose of what he is trying to do. He is waiting for the market to catch up to construction. He requested that existing projects like his be grandfathered in at the existing rates.

There being no further comments offered, the public hearing was closed.

Mayor Pro Tempore Carr felt that there should be a way to take a look at projects that have allotments who would be pulling permits soon but not in time to meet the timeline discussed previously.

Mr. Dilles stated that staff's recommendation includes all applicants who file complete applications by September 16 to pay the existing fees at the time that they pull their building permits.

Mayor Pro Tempore Carr inquired how the date of September 16 works for a project that already has an allotment?

City Manager Tewes stated that staff does not believe that the cost is a significant element of the proforma. Under staff's proposal, there are various elements along the way, including the filing for fees for maps and building permit. Staff is recommending that they be charged at the rate in place at the time it requires staff review. Therefore, staff's proposal did not include grandfathering on the basis of Measure P allocations as staff did not see a justification for doing so.

Mr. Dilles said that staff felt that there was a little more urgency in this case given the need for the cash flow to pay for the ongoing cost which is a little different from the impact fees. He indicated that the September 16 date was selected because this is the soonest date that staff could implement the fees, noting that the City has to wait 60 days by law to implement the fees.

Council Member Tate said that since these are direct costs that the City is spending today, he understood why staff wants to move forward as expeditiously as possible. He stated that he would be open to implementing the fees at a later date to give developers advance notice.

Director of Community Development Bischoff said that if an allocation is granted this year, a developer can pull permits in Fiscal Year 2003-04. Therefore, the earliest that you can pull permits for allocation is fifteen months. Should the Council grandfather these allocations, it would be potentially delaying implementation of an increase for 27 months.

Mr. Myer stated that the majority of his building permits have to be pulled by June 2003 with the remainder to be pulled by June 2004. He did not believe that he can pull 13 building permits until April 2003. Therefore, he could not take advantage of grandfathering these homes. On the remainder, he would have to play the game of pulling the permits at this time and try to keep the project alive until he is actually ready to build the homes and the market catches up.

City Manager Tewes stated that the approximate dollar amount being talked about per housing unit would be an increase of \$400 per housing unit.

Council Member Chang noted that this is money that the City needs in order to balance the Community Development budget. She indicated that the Council tries hard to be fair to individuals. If consideration is given to Mr. Myer, consideration would need to be given to everyone else and the City would not be able to balance its budget.

Mr. Myer recommended that the Council consider grandfathering fees for Measure P projects that received allocations two or three years ago.

Council Member Sellers stated that the Council has tried to be sympathetic, as much as possible, to Mr. Myer's concerns. He felt that there may be options in his particular case, but overall, the Council has a responsibility. He said that based on studies conducted, the City is not close to paying true costs. The Council needs to remember that this item would return for potential further adjustments and that there may be reductions at that time that would mitigate Mr. Myer's concern or may be increased based on the understanding of what the costs are.

In response to Mayor Pro Tempore Carr's inquiry, Mr. Dilles indicated that there would not be any impacts in this resolution as they relate to the decision being made on the recreation facilities as staff separated out the recreation fees.

**Action:**        *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution 5591.*

**Action:**        *On a motion by Council Member Sellers, and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Directed** Staff to Return to City Council Within One Year Concerning the Concerning Potential Further Adjustments to Planning, Building, and Engineering Fees.*

**3.        EMERGENCY AUTHORIZATION FOR STORM DRAIN REPAIR/REPLACEMENT IN KEYSTONE AVENUE Resolution No. 5596**

This item was reconsidered at this time as four affirmative votes would be needed to adopt the resolution.

**Action:**        *On a motion by Council Member Tate, and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Adopted** Resolution No. 5596, Declaring the Need for This Emergency Expenditure.*

**Action:** *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Tate, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Approved** Expenditure of \$16,262 From the 2002-03 Public Works-Streets Division Operating Budget to Fund an Emergency Storm Drain System Repair/Replacement on Keystone Avenue.*

Council Member Chang indicated that she also has a conflict on this item as her office is located close to this project.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council unanimously (5-0) agreed to **reconsider** the action taken on agenda item 3.*

City Manager Tewes informed the Council that it would need to invoke the "Rule of Necessity" as two council members (Chang and Sellers) have indicated that they have property interest conflicts associated with this item.

Based on a coin toss by City Clerk Torrez, Council Member Sellers would be stepping down and abstaining from this item.

**Action:** *On a motion by Council Member Tate, and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Adopted** Resolution No. 5596, Declaring the Need for This Emergency Expenditure.*

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Approved** Expenditure of \$16,262 From the 2002-03 Public Works-Streets Division Operating Budget to Fund an Emergency Storm Drain System Repair/Replacement on Keystone Avenue.*

Council Member Sellers resumed his seat on the dais.

**16. PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2002-03 ANNUAL ASSESSMENT FOR THE FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT - Resolution Nos. 5597, 5593, 5599, 5560, 5561, 5562**

Assistant Public Works Director Struve presented the staff report. He indicated a correction in the engineer's report in the Oak Creek sub area. He stated that one parcel owner had been erroneously charged for four parcels when they only owned one parcel over the last two years. He indicated that staff is in touch with the property owner and that the City would be making an adjustment by sending them a refund for the over charges.

Mayor Kennedy opened the public hearing.

City Clerk Torrez informed the City Council that a speaker card was submitted by JoAnn Brown who states in her speaker card that this item was considered late in the hour and could not stay for its discussion. Ms. Brown noted her opposition to staff's recommendation for the Rose Haven sub area.

No other comments being offered, the public hearing was closed.

Mr. Struve noted that Mayor Kennedy has a conflict in Conte Garden and Council Member Chang has a conflict in the Sandalwood sub area. He said that staff prepared the resolutions accordingly. He indicated that he spoke with the Rose Haven residents about their specific concerns. The residents felt that the City was over watering and investigated this concern. He stated that residents were also concerned about lighting in the basketball area. It was felt that having the lights on all night encouraged basketball play at unnecessary times. He told them that staff would install a timer. Also, of concern were the street lights not working. Staff is working on this issue with PG&E. He is hopeful that there would be enough street light illuminated such that there is enough light to do without lighting in the park all night. He informed the Council that the residents are philosophically opposed to being a part of a landscaping and lighting sub area because they are aware of the fact that they cannot preclude the public from coming in and using the park. It is felt that it was unfair for 26 property owners to pay and maintain an area that is opened to the public. He indicated that he advised the residents that they could choose, collectively, to close the park to public use. Staff explored the possibility of the homeowners purchasing the park, noting that they have to have 100% of the homeowners to move toward a homeowners association. If passed, they would be taking on liability and insurance matters and that they seemed indifferent to it when he mentioned these things. He said that the proposed fees would maintain the current level of services. He advised that while staff is improving the maintenance of these areas, he felt that staff/contractors can still do better. Staff is not proposing an increase in service other than getting better at the service it is doing with the proposed increases.

**Action:**                      *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution 5597 and Resolution 5598 (Excluding Conte Gardens and Sandalwood Subareas).*

Mayor Kennedy stepped down from the following action due to a conflict of interest.

**Action:**                      *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Adopted** Resolution 5599 and Resolution 5600 (Referring Only to the Conte Gardens Subarea).*

Mayor Kennedy resumed his seat on the dais.

Council Member Chang stepped down from the following action due to a conflict of interest.

**Action:**                      *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **adopted** Resolution 5601 and Resolution 5602, (Referring Only to the Sandalwood Subarea).*

Council Member Chang resumed her seat on the dais.



## ***City Council Action***

### **18. HAZARDOUS VEGETATION ABATEMENT - Resolution Nos. 5603 and 5604**

Assistant to the City Manager Stevensen-Dile presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5603, Declaring Weeds to Be a Nuisance.*

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5604, Confirming the Santa Clara County Fire Marshal's Office Final Report on the 2002 Hazardous Vegetation Program (Brush and Weed Abatement).*

## **ADOPTION OF ORDINANCES**

### **19. ADOPT ORDINANCE NO. 1566. NEW SERIES**

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1566, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1523, New Series, to Amend the Development Agreement to Incorporate a Six-Month Exception to Loss of Building Allocation for Application MP 00-22: Cochrane - Dividend (APNs 728-42-008, 017; and 728-43-021) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

### **20. ADOPT ORDINANCE NO. 1567. NEW SERIES**

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1567, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1530 Amending the Development Agreement for Application MP 99-26: Malaguerra-Ansuini/Mancias to Incorporate a Six-Month Exception to Loss of Building Allocation and Revisions to Paragraph 14 (APN 728-35-016; 728-35-017) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

### **21. ADOPT ORDINANCE NO. 1568. NEW SERIES**

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1568, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1516, New Series, to Amend the Development Agreement Amendment to Incorporate a One Year Exception to Loss of Building Allocation for Application MP 00-01: Berkshire-Singh (APN 764-23-054) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None;*

*ABSTAIN: None; ABSENT: None.*

**22. ADOPT ORDINANCE NO. 1569. NEW SERIES**

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No.1569, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Section 3.50.050(1)(C) (Schedule of Fees and Service Charges) of Chapter 3.50 (Fee and Service Charge Revenue/cost Comparison System) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding User Fees and Service Charges, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**23. ADOPT ORDINANCE NO. 1570. NEW SERIES**

**Action:** *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No.1570, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Sections 3.56.010(1)(F), 3.56.010(1)(J), 3.56.010(1)(M), 3.56.050, and 3.56.160(1)(A) of Chapter 3.56 (Development Impact Mitigation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding Development Impact Mitigation Fees, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**24. ADOPT ORDINANCE NO. 1571. NEW SERIES**

**Action:** *At the request of City Attorney Leichter, this ordinance was tabled in order to confirm that the action taken this evening exempts recreation fees.*

**Action:** *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Carr, the City Council **agreed to extend** its meeting beyond 11:00 p.m.*

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting at 11:05 p.m. to closed session to discuss the above listed closed session items.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:23 p.m.

**CLOSE SESSION ANNOUNCEMENT**

City Manager/Executive Director Tewes announced that no reportable action was taken in closed session.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

No items were identified.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:25 p.m.

**MINUTES RECORDED AND PREPARED BY**

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**MOIRA MALONE, DEPUTY CITY CLERK**

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**IRMA TORREZ, CITY CLERK**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

**TITLE: DEVELOPMENT AGREEMENT AMENDMENT  
DAA 00-12: E. DUNNE - GREWAL**

### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First reading in full of the Development Agreement Amendment (DAA) Ordinance
3. Introduce on first reading the DAA Ordinance (roll call vote)

### **EXECUTIVE SUMMARY:**

The applicant is requesting approval of a DAA to allow for a nine-month extension of time for four building allotments of a 4-unit single-family detached project located at the northeastern quadrant of the intersection of E. Dunne Avenue and Hill Road. The project received City Council approval for a nine-month Exception to Loss of Building Allocation (ELBA) at the June 19<sup>th</sup> Council meeting.

Under normal processing procedures, a request for a DAA and an ELBA are presented simultaneously for consideration and action; however, there was not adequate time for staff to properly notice the proposed Amendment. To ensure that the applicant would not lose building allocations the ELBA request, which does not require public noticing, was routed to Council for approval prior to the June 30 expiration date, as noted above.

The Commission reviewed the DAA application at their July 9, 2002, meeting and voted 6 - 0, with one Commissioner absent, recommending approval to the Council. The Council's approval of the ELBA included a July 12, 2002, deadline for the applicant to file for Final Map approval and to submit a complete application for Site and Architectural approval. The applicant was able to meet this deadline. A copy of the Commission's staff report and draft minutes are attached for the Council's reference.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item # 18**

**Prepared By:**

**Planning Consultant**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

## **ORDINANCE NO. 1576, NEW SERIES**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1542, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-02: E. DUNNE - GREWAL TO ALLOW FOR A NINE-MONTH EXTENSION OF TIME (APN 728-11-026)**

#### **THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 00-17, adopted April 25, 2000, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-00-02: E. Dunne - Grewal	4

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents, which were signed by the City of Morgan Hill and the property owner, set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the amended development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 9.** AMENDMENT TO PARAGRAPH 14, ADDING THE FOLLOWING SUBSECTION (q). The project shall provide the following information, by address for each unit, to the Community Development Department:

- Date of sale
- The number of bedrooms.
- The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

**SECTION 10.** Exhibit B of the development agreement is amended to read as follows:

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**EXHIBIT "B"**

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**DEVELOPMENT SCHEDULE MP- 00 - 02: E. Dunne-Grewal  
FY 2000-01 (1 allotment) , FY 2001-02 (3 allotments)**

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**I. SUBDIVISION AND ZONING APPLICATIONS**

Applications Filed: (12-11-00)

**II. SITE REVIEW APPLICATION**

Application Filed: (~~07-01-01~~) (02-01-02)

**III. FINAL MAP SUBMITTAL**

Map, Improvements Agreement and Bonds: (~~07-01-01~~) (07-12-02)

**IV. BUILDING PERMIT SUBMITTAL**

Submit plans to Building Division for plan check:

Fiscal Year 2000-01 Allotment:	<del>(10-01-01)</del> <del>(06-01-02)</del> (11-30-02)
Fiscal Year 2001-02 Allotment:	<del>(6-01-02)</del> (11-30-02)

**V. BUILDING PERMITS**

Obtain Building Permits:

Fiscal Year 2000-01 Allotment:	<del>(12-31-01)</del> <del>(06-01-02)</del> (02-15-03)
Fiscal Year 2001-02 Allotment:	<del>(06-30-02)</del> (02-15-03)

Commence Construction:

Fiscal Year 2000-01 Allotment:	<del>(12-31-01)</del> <del>(06-01-02)</del> (03-30-03)
Fiscal Year 2001-02 Allotment:	<del>(06-30-02)</del> (03-30-03)

Failure to obtain building permits and commence construction by the date listed in Section V. above, shall result in the loss of building allocations. Failure to submit a Final Map Application or a Building Permit Submittal, Sections III. and IV. respective, six (6) or more months beyond the filing dates listed above shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above, Sections III. and IV. respectively, may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 2 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31<sup>st</sup> Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21<sup>st</sup> day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**🦉 CERTIFICATE OF THE CITY CLERK 🦉**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1576, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:**\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

### **ANNEXATION AND ZONING AMENDMENT**

### **APPLICATIONS, ZA-02-02: COCHRANE-BORELLO II**

#### **RECOMMENDED ACTION(S):**

1. Open/Close Public Hearing
2. Approve Negative Declaration
3. Waive the reading in full of the Zoning Amendment Ordinance
4. Introduce on first reading the Zoning Amendment Ordinance (roll call vote)

**EXECUTIVE SUMMARY:** A request for approval to pre-zone approximately 16-acres from County A-20S to City R1-20,000 (single-family low density residential) east of Peet Road, between Cochrane Road and Half Road. This item was continued from the Council's July 17 meeting.

The General Plan designation for the parcel is Single Family Low. The requested R1-20,000 zoning designation is consistent with the General Plan designation for the parcel, and provides a good transition from the R1-20,000RPD zoning designation west of the site. The subject parcel is currently abutting the Morgan Hill City boundary on the eastern and western portions of the parcel and is located within the City's Urban Service Boundary. Inclusion of the parcels into the City limits would represent a logical adjustment of the City's boundary line.

The property owner of APN 728-34-006 initially did not want to be included in the annexation because he has established an agricultural use on the property, boarding of horses for personal use. The current County zoning allows for this use; however, the City of Morgan Hill would require additional setback requirements from neighboring habitable structures, which would essentially prohibit the owner from continuing to board horses. The property owner of APN 728-34-007 has agreed to record a 100 foot agricultural buffer along the shared property line and to notify potential buyer(s) of APN 728-34-007 of the adjacent agricultural use. The property owner of APN 728-34-006 is now in favor of the annexation.

The Planning Commission considered the annexation and pre-zoning application at their June 25, 2002, meeting. The Commission unanimously voted to recommend approval of the request. The Commission's staff report and draft minutes are attached for the Council's reference. The annexation portion of this request will be deferred from Council consideration until such time as the applicant submits a signed pre-annexation agreement and receives clearance from the City's Building Division that there are no code violations on site. Council action on the pre-zone application will allow staff and the applicant to complete the above pre-annexation items.

**FISCAL IMPACT:** None. Filing fees were paid to cover the cost of processing this application.

**Agenda Item # 19**

**Prepared By:**

**Planning Consultant**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

**ORDINANCE NO. 1577, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 16 ACRES, LOCATED ON THE EAST SIDE OF PEET ROAD - BETWEEN COCHRANE ROAD AND HALF ROAD FROM COUNTY A-20S TO CITY R-1(20,000). (APNs 728-34-006 & 007)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** Establish an R-1(20,000) pre-zoning designation for 16-acres of land located on the east side of Peet Road, between Cochrane Road and Half Road.

**SECTION 2. DESCRIPTION OF LAND IN PRE-ZONING.** There hereby is attached hereto and made a part of this ordinance a legal description entitled “Exhibit A” which gives the boundaries of the described parcels of Land.

**SECTION 3. INCORPORATING THE MAP BY REFERENCE.** There hereby is attached hereto and made a part of this ordinance, a zoning map entitled “Exhibit B” Map Showing Pre-zoning Lands of Borello, Being a Part of Ordinance No. 1577, New Series, which gives the boundaries of the described parcels of Land.

**SECTION 4. FINDING OF CONSISTENCY WITH THE GENERAL PLAN.** The City Council hereby finds that the amendments established by this ordinance as herein described are compatible with the goals, objectives, policies and land use designation of the General Plan of the City of Morgan Hill. The Council further finds that the proposed amendments are required in order to serve the public health, convenience and general welfare as provided by Section 18.62.010 of the Morgan Hill Municipal Code.

**SECTION 5.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. Based upon said study a mitigated Negative Declaration will be filed.

**SECTION 6.** The approved project shall be subject to the following condition:

1. Future subdivision and development of the 16-acre site (APNs 728-34-006 & 007) shall be in compliance with the site development standards of the R-1(20,000) zoning district.
2. Prior to annexation approval, the applicant shall record a 100 foot agricultural buffer running along the southern property line of APN 728-34-006, contiguous with APN 728-34-007, which shall prohibit habitable structures from being constructed within the 100 foot buffer. Said easement

shall remain in place until such time as agricultural activities cease on APN 728-34-006

3. Applicant shall disclose to future buyers of APN 728-34-007 the existing agricultural use of parcel 728-34-006.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31<sup>st</sup> Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21<sup>st</sup> day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**🏛️ CERTIFICATE OF THE CITY CLERK 🏛️**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1577, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21<sup>st</sup> day of August, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

**TITLE: DEVELOPMENT AGREEMENT AMENDMENT  
DAA 01-04: CENTRAL - CENTRAL PARK**

### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First reading in full of the Development Agreement Amendment (DAA) Ordinance
3. Introduce on first reading the DAA Ordinance (roll call vote)

### **EXECUTIVE SUMMARY:**

The applicant is requesting a DAA for three of the eighteen building allotments comprising Phase 5 of the Central Park Project, located on 11.51 acres on the north side of E. Central Avenue, east of Calle Mazatan. The applicant received three allotments for FY 2001-2002, ten allotments for FY 2002-2003, and five allotments for 2003-2004. The project received City Council approval for a two-month Exception to Loss of Building Allocation (ELBA) at the June 26<sup>th</sup> Council meeting.

Under normal processing procedures, a request for a DAA and an ELBA are presented simultaneously for consideration and action; however, there was not adequate time for staff to properly notice the proposed Amendment. To ensure that the applicant would not lose building allocations, the ELBA request, which does not require public noticing, was routed to Council.

The Commission reviewed the DAA application at their July 9, 2002, meeting and voted 6 - 0, with one Commissioner absent, recommending approval to the Council. A copy of the Commission's staff report and draft minutes are attached for the Council's reference.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item # 20**

**Prepared By:**

**Planning Consultant**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

## **ORDINANCE NO. 1578, NEW SERIES**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1464, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-18: CENTRAL - CENTRAL PARK TO ALLOW FOR A TWO-MONTH EXTENSION OF TIME (APN 726-27-105)**

#### **THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 00-17, adopted April 25, 2000, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-98-30: Central - Central Park	3
MP-00-18: Central - Central Park	15

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents, which were signed by the City of Morgan Hill and the property owner, set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 9.** AMENDMENT TO PARAGRAPH 14, ADDING THE FOLLOWING SUBSECTION (t). The project shall provide the following information, by address for each unit, to the Community Development Department:

- Date of sale
- The number of bedrooms.
- The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

**SECTION 10.** Exhibit B of the development agreement is amended to read as follows:

#### **EXHIBIT "B"**

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**DEVELOPMENT SCHEDULE MP-00-18: Central - South Valley Developers  
FY 2001-2002, FY 2002-2003, FY 2003-2004**

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<b>I.</b>	<b>SUBDIVISION AND ZONING APPLICATIONS</b> Applications Filed:	July 31, 2001
<b>II.</b>	<b>SITE REVIEW APPLICATION</b> Application Filed:	July 31, 2001
<b>III.</b>	<b>FINAL MAP SUBMITTAL</b> Map, Improvements Agreement and Bonds:	March 1, 2002
<b>IV.</b>	<b>BUILDING PERMIT SUBMITTAL-FY 2001-02</b> Submit plans to Building Division for plan check:	April 2, 2002
<b>V.</b>	<b>PULL BUILDING PERMITS-FY 2001-02</b> <u>3 permits</u> must be pulled from the Building Division:	<del>May 8, 2002</del>

	August 30, 2002
<b>VI. COMMENCE CONSTRUCTION-FY 2001-02</b> Construction must have begun on 3 permits.	<del>June 30, 2002</del> August 30, 2002
<b>VII. PULL BUILDING PERMITS-FY 2002-03</b> 10 <u>permits</u> must be pulled from the Building Division:	May 8, 2003
<b>VIII. COMMENCE CONSTRUCTION-FY 2002-03</b> Construction must have begun on 10 permits.	June 30, 2003
<b>IX. BUILDING PERMIT SUBMITTAL-FY 2003-04</b> Submit plans to Building Division for plan check:	April 2, 2003
<b>X. PULL BUILDING PERMITS-FY 2003-04</b> <u>5 permits</u> must be pulled from the Building Division:	May 8, 2004
<b>XI. COMMENCE CONSTRUCTION-FY 2003-04</b> Construction must have begun on 5 permits.	June 30, 2004

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit, two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 8 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31<sup>st</sup> Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21<sup>st</sup> day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**☞ CERTIFICATE OF THE CITY CLERK ☞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1578, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 31, 2002***

### **SENIOR ADVISORY COMMITTEE RESOLUTION AND RECOMMENDATIONS REGARDING NUTRITION SITE PROGRAM**

**RECOMMENDED ACTION(S):** Receive Resolution adopted by the Senior Advisory Committee on May 7, 2002 and statement of recommendations regarding kitchen facilities for the senior wing of the new community recreation center.

#### **EXECUTIVE SUMMARY:**

Over the past several months, the Senior Advisory Committee (SAC) has worked to identify the impact the construction of the Community Recreation Center (CRC) will have on the Senior Nutrition Program (Program) and the members of the senior community who participate in that program. The Program is currently operated out of the Friendly Inn and is administered by Catholic Charities, which serves as a contractor to Santa Clara County Department of Social Services. The Program currently serves an average of 75 to 80 lunches per day in a kitchen area of apx. 300 sq. ft. The SAC feels careful consideration must be given to the future location of the Program as well as to the kitchen facilities and equipment.

The County requires dedicated use of the equipment used to prepare meals for the Program. This includes the stove, oven, refrigerator, freezer and appliances. The SAC is concerned that housing the Program at the CRC will preclude other community groups and organizations from having equitable access to kitchen facilities. The SAC recognizes that a full-service kitchen will be available at the Community and Cultural Center, but agree that at least a "warming" kitchen is needed to support programs at the CRC for senior club groups, birthday party support, youth and teen programs, and potlucks. Members of the Committee have conducted site visits to the Cupertino Senior Center and the Evergreen Community Center in San Jose. The Cupertino Senior Center has a separate kitchen and dining room facility for its Senior Nutrition Program and the Evergreen Center has a joint-use agreement between the Santa Clara County and the City of San Jose, which provides organizations and individual residents access to the kitchen on the weekends. Upon meeting with the Senior Nutrition Program Manager at the Evergreen Center, the Committee learned the joint-use agreement has not been as successful as hoped, due to the County's restrictions on equipment use and because there has been repeated theft and abuse of equipment, appliances and utensils by individuals who rent the facility on weekends. Please refer to attachment 3.

The SAC recommends the City consider the following option of constructing two kitchens in the CRC with one kitchen dedicated to the Senior Nutrition Program and a smaller kitchen for community use in order to meet the needs of the Senior Nutrition Program, the senior community and the larger Morgan Hill community for equitable access. On May 21 the Park and Recreation Commission agreed with the statement of recommendations from the SAC and recommend to Council to move forward with their recommendations, noting this programming space could be combined into one area.

**FISCAL IMPACT:** The 600 sq. ft kitchen is in the CRC budget. The SAC recommends construction of a second smaller kitchen of 320 sq. ft. Based on \$407/sq. ft. (BAE analysis 1/02), this adds an additional \$130,240 to the cost of the CRC. The second kitchen is not funded or programmed into the CRC.

Agenda Item #

Prepared By:

Management Analyst

Approved By:

Manager, Recreation &  
Community Services

Submitted By:

City Manager



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: July 31, 2002***

Agenda Item #

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

**ASSESSMENT OF HAZARDOUS VEGETATION  
MANAGEMENT PROGRAM CHARGES**

**RECOMMENDED ACTION:**

1. **Open/Close** Public Hearing.
2. **Adopt Resolution** ordering the Final Report on the 2002 Hazardous Vegetation Program be transmitted to the County Assessor's Office and that liens be posted against the properties on the report.

**EXECUTIVE SUMMARY:**

Since 1995 when the City contracted with County Fire for fire suppression services, the City's Hazardous Vegetation Management Program has been administered through the Santa Clara County Fire Marshal's Office. The program identifies properties in Morgan Hill with hazardous vegetation and notifies the property owners. The property owners are given a specific timeline to remove the vegetation, and if they do not, the vegetation is removed by a contractor selected by the County. The cost for the abatement is then passed on to the owner as an assessment on their property tax bill.

Six hundred forty three parcels were included in the 2002 Hazardous Vegetation Program. The Fire Marshal's Office has informed us that 126 parcels of land in Morgan Hill were abated by the County contractor this year; 80% of properties were abated by the property owner. The parcels are listed in Exhibit A. At the July 17, 2002 City Council meeting, July 31, 2002 was set as the public hearing date for comments by property owners about the hazardous vegetation program.

On completion of the public hearing, the final stage in the 2002 Hazardous Vegetation Abatement Program is for the Council to order that the abatement expenses incurred be assessed against the owners' property tax bill. This is accomplished by adopting the attached resolution authorizing the transmission of the Final Report to the County Assessor's Office, and that liens be posted against the properties on the report.

**FISCAL IMPACT:**

The Hazardous Vegetation Management Program is user fee supported. The per lot assessment includes costs for doing the weed control work plus the overhead cost to provide the service.

**RESOLUTION NO. 5605**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ORDERING THE FINAL REPORT ON THE 2002 HAZARDOUS VEGETATION PROGRAM BE TRANSMITTED TO THE COUNTY ASSESSOR'S OFFICE AND THAT LIENS BE POSTED AGAINST THE PROPERTIES ON THE REPORT.**

Whereas the City Council, on the 17th day of July 2002, adopted Resolution No. 5604 confirming the Santa Clara County Fire Marshal's Office Final Report on the 2002 Hazardous Vegetation Program; and

Whereas this report identifies properties in Morgan Hill where hazardous weed and brush abatement was conducted by the County of Santa Clara's contractor in accordance with the 2002 Hazardous Vegetation Program; and

Whereas property owners listed on the Final Report were notified of the public hearing conducted on July 31, 2002; and

Whereas properties requiring abatement by the Fire Marshal's Office contractor are to be assessed the abatement cost via a lien on their property taxes;

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Morgan Hill that the Final Report on the 2002 Hazardous Vegetation Program, attached hereto as "Exhibit A", be transmitted to the Santa Clara County Assessors Office and that the Santa Clara County Assessors Office post a lien against the properties on this list in accordance with the appropriate statutes.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Special Meeting held on the 31<sup>st</sup> Day of July, 2002 by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**☞ CERTIFICATION ☞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5605, adopted by the City Council at the Special Meeting on July 31, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *July 31, 2001*

### **DEVELOPMENT AGREEMENT AMENDMENT DAA 01-07**

### **COCHRANE-MISSION VIEW**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**Agenda Item #**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

The applicant is requesting an amendment to an approved development agreement to incorporate 4 development allotments received as part of the 2001 RDCS competition.

The Mission Ranch project is located at the southeast corner of the intersection of Mission View Dr. and Cochrane Rd. The project has completed 113 units of what will ultimately be a development of approximately 309 homes. In the 2000 MP competition the project received 15 building allocations for FY 2002-03 and 9 for FY 2003-04. The 24 allotments originally defined phases V & VI of the project. In November 2001 the City Council approved a development agreement for phases V & VI. In May 2002, the Planning Commission awarded 4 building allotments to the Mission Ranch project for fiscal year 2003-2004. This would bring the total number allotments for 2003-04 to 13.

On June 11, the Planning Commission reviewed and approved a 28-lot tentative map for phases V & VI. As a condition of approval, the project development agreement had to be amended to address the 4 new allotments. Attached to this report as part of the ordinance, is an amended development agreement. The text added to the agreement is shown in ***bold italic*** and text deleted is shown in ~~strikeout~~.

The most significant changes to the agreement occur in paragraph 14 which includes the addition of subsection (n) vi, requiring Peet Rd. frontage improvements, the addition of subsection (r) requiring the annual reporting of the unit sale prices, the modification of (l)i to require an additional BMR in future phase VII and date changes within Exhibit B found toward the end of the document.

On July 9, the Planning Commission recommended approval (6-0 vote) of the development agreement amendment request. A copy of the Planning Commission's staff report and minutes are attached for the Council's reference.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

## **ORDINANCE NO. 1579, NEW SERIES**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR PHASES V & VI OF THE MISSION RANCH PROJECT, APPLICATIONS MP 00-21 & MP 01-03: MISSION VIEW-DIVIDEND (APNs 728-32-001, 002, 003 & 728-33-001)**

**WHEREAS**, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

**WHEREAS**, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 24 building allotments for application MP 00-21: Mission View-Dividend and 4 building allotments for application MP 01-03: Mission View-Mission Ranch; and

**WHEREAS**, on December 5, 2001, the City Council approved the development agreement for application MP-00-21: Mission View-Dividend; and

**WHEREAS**, The applicant is requesting to amend the approved development agreement to incorporate the four development allotments awarded to the MP 01-03: Mission View-Mission as part of the 2001 RDCS competition.

**WHEREAS**, said development agreement amendment was considered by the City Council at their regular meeting of July 31, 2002, at which time the City Council approved of development agreement amendment application DAA 01-07: Mission View-Mission Ranch.

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to replaces Ordinance No. 1535 and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 2.** The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 3.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 4.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 5.** AMENDED DEVELOPMENT AGREEMENT. The amended development agreement, attached as Exhibit A, shall replace the agreement approved under Ordinance No. 1535.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31<sup>st</sup> Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21<sup>st</sup> day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**         **COUNCIL MEMBERS:**  
**ABSENT:**      **COUNCIL MEMBERS:**  
**ABSTAIN:**     **COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

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**Irma Torrez, City Clerk**

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**Dennis Kennedy, Mayor**

**🏛️ CERTIFICATE OF THE CITY CLERK 🏛️**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1579, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

Recorded at the request of  
and when recorded mail to:

City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037

**RESIDENTIAL DEVELOPMENT AGREEMENT**

This Agreement entered into this            day of           , 2002, by and between **Dividend Homes Inc.**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

**RECITALS**

This Agreement predicated upon the following facts:

**A.** Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

**B.** Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements;

**C.** The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

**D.** The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

**E.** In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

**F.** On December 5, 2001, the City Council of the City of Morgan Hill adopted



Ordinance No. 1535, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on January 5, 2002.

**NOW, THEREFORE**, the parties agree:

**1.** Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

**2.** Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

**3.** Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

**4.** Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

**5.** Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6.      Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7.      Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8.      City's Approval Proceedings for Project. On July 11, 2001 *and May 14, 2002*, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-00-21: Cochrane-Mission Ranch *and MP 01-03: Mission View-Mission Ranch*, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of ~~24~~ *28* single family detached homes as approved by the City of Morgan Hill Planning Commission.

9.      Changes in Project.

(a)      No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b)      Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c)      In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

10.     Time for Construction and Completion of Project.

(a) **Securing Building Permits and Beginning Construction.** Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) **Progress Reports Until Construction of Project is Complete.** Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) **City of Morgan Hill to Receive Construction Contract Documents.** If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) **Certificate of Completion.** Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

**11. Hold Harmless.** Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged

to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

**12. Insurance.** Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) **Compensation Insurance.** Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) **Public Liability and Property Damage Insurance.** Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) **Additional Insured.** Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

**13. Cancellation of Insurance.** On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

**14. Specific Restrictions on Development of Real Property.** Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 7,000/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Administrative Site and Architectural Review Process.

- (b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Administrative Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Administrative Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Administrative Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following safety features in the development:

- (i) Fire escape ladders will be provided in all upper floor bedrooms.
- (ii) Fire extinguishers will be provided in all units.
- (iii) All outdoor lighting will meet the Police Department specifications.
- (iv) Each home will have internally illuminated address numbers and the address numbers painted on the curb.
- (v) Non combustible siding material will be used on at least 50% of the homes and on 50% of the individual unit.
- (vi) Intrusion and fire alarm system with auto dialer or monitored by a central station will be installed in all units. The system shall monitor all doors and windows.

- (vii) Automatic earthquake shut-off valves shall be provided for gas service.

(i) Property Owner agrees to include the following open space and landscape improvements in the development:

- (i) A 15' landscape buffer will be installed along Mission View and a 30' buffer will be installed along Peet Rd. and a 30' buffer will be provided along Cochrane Road.
- (ii) All park and open space area are to be maintained by a HOA.
- (iii) A path will be provided along the front of the project that will provide a link to County bike and trail system.
- (iv) Twenty four inch box size trees will be provided at a ratio of one tree per ten on-site trees. The trees shall have a minimum height of nine feet and spread of three to four feet.
- (v) Varied front yard landscape plans will be installed prior to occupancy.
- (vi) Deciduous trees will be planted along the south facing sides of the homes.
- (viii) Drought tolerant grasses will be used for lawn areas. Lawn areas will not exceed 25 percent of the landscape area.
- (ix) Automatic irrigation systems will be installed which utilize separate valves and circuits for trees, shrubs and ground covers and lawn areas.
- (x) Hardscape will be provided on at least 15 percent of the landscape area.
- (xi) Water conserving plants will be used from City Selected Plant List.
- (xii) All street trees (one per lot, two per corner lot) will be 24-in. box trees from the city-approved list.

(k) Property Owner agrees to purchase one transferable development credit (TDC's) subject to this development potential transfer mechanism. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(l) Property Owner agrees to include the following affordable housing features in the development:

(i) The Property Owner shall provide at least two of the units for participation in a Below Market Rate (BMR) for sale program as low income units as approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. The BMR units shall be under construction and the framing inspection passed prior to the framing inspection on the ~~12~~ **14th** market rate unit.

(ii) ***The Property Owner agrees to build the 14<sup>th</sup> BMR for the project as part of Phase VII of the Mission Ranch project or if 2 allocations become available sooner, as two final units within Phase VI.*** ~~The Property Owner agrees to pay 40 percent of the per unit cost of the standard housing mitigation fee prior to the issuance of building permits for the project, if~~

~~determined to be required by the Planning Manager and City Attorney.~~

(iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(iv) The two BMR units shall be 4 bedrooms 2.5 baths and 1637 sq. ft. in size.

(vi) Each of the BMRs shall be completed with fixtures, appliances, flooring and finishes offered as base or standard to the market rate units.

(m) Property Owner agrees to include the following construction features in the development:

(i) Dry wall will be source separated and recycled;

(ii) Cardboard containers and boxes are source separated and recycled.

(iii) Buildings consume 15% less energy than allowed by California's Title 24. This will be accomplished by using the high efficiency furnaces, insulating hot water pipes, providing thermostatically controlled attic fans, exterior wall and attic insulation and points of demand hot water circulating system and high efficiency appliances.

(iv) Heating systems with two separate zones will be used in minimum of 60% of the dwelling units.

(v) Recirculating hot water system with demand pumping

(vi) Class A light weight concrete roof tile.

(vii) Installation of additional grounding electrode such as driven ground rod, plate electrode, metal underground water pipe (extending at least 10 feet in distance) or ground ring, and installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing.

(viii) Future ready wiring such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and CAT5R or equivalent for telephone lines.

(ix) Plywood floors are nailed and just prior to carpet installation they are screwed to avoid squeaking. Post tensioned slab floors, all sheet rock screwed. A/C provided. Gas will be supplied to all dryer spaces plus 220 volt outlet. Insulate interior bath walls. Attic spaces have thermostatic controlled exhaust fans. Vertical drain lines between floors will be cast iron to reduce noise.

(x) Plan A & C will extend porch across front of den and/or living room. Uses porches, balconies, or multi-unit courtyards on at least 25% of units

(xi) At least two different roof lines and two different pitches will be used throughout the project.

(n) The Property Owner agrees to provide the following circulation improvements:

(i) As part of the second phase (2003-04 allotments) the property owner agrees to install a pathway from the project south to Half Rd. The amount of pathway installed will be based on a \$2000/per unit

commitment. The final design and location of the pathway will be to the satisfaction of the Director of Public Works. The pathway shall be completed prior to the issuance of the 24<sup>th</sup> building permit.

- (ii) The owner shall install crosswalks and caution signals or other off-site equivalent traffic safety improvements as designated and approved by MHUSD.
- (iii) The property owner will provide on-site walkways and bike paths throughout the development. A bike/pedestrian path will be installed through the SCVWD land to connect the Carmelo Ct. cul-de-sac and to the tennis courts in the retention basin.
- (iv) Project will provide for a third looped connection to Mission View Road.
- (v) Cochrane Road improvements will be completed along the project frontage and complete the corner improvements onto Peet Road with this phase of the project. The improvements will include street, path and landscaping.
- (vi) ***Peet Road improvements will be completed along the phase VI frontage and complete the corner improvements onto Mission Avenida. The improvements will include street, path and landscaping.***
- (vii) Applicant will contribute \$1,000 per unit to the Capital Program Fund.

Improvements

(o) The Property Owner agrees to provide the following park and recreation improvements:

- (i) The applicant will pay the standard park fees.
- (ii) A looping system of pedestrian/bike paths will be installed to provide access to all park and recreation areas.
- (iii) Class II bicycle pathways will be provided along the improved Mission View Dr. and a new pedestrian/bike path will be constructed along Cochrane Road.

(p) Project will grid water main between Cochrane Road, Peet Road, and Mission View Dr., plus interior project water lines are gridded.

(q) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

***(r). The project shall provide the following information, by address for each unit, to the Community Development Department:***

- Date of sale***
- The number of bedrooms.***
- The final sales price***

***This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.***



**15. Effect of Agreement on Land Use Regulations.**

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees and apply building standards which are in effect at the time the building permits are actually issued rather than those effective as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

**16. State or Federal Law.** In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

**17. Periodic Review.**

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

**18. Amendment or cancellation of Agreement.** This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

**19. Enforcement.** Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

**20. Termination of Agreement.** This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

**21. Default by Property Owner.** Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

**22. Default by the City of Morgan Hill.** The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

### **23. Cure of Default.**

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

### **24. Remedies.**

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

**25.** Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

**26.** Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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Property Owner:	Dividend Homes Inc. Attn: Dick Oliver 275 Saratoga Ave. # 105 Santa Clara, CA 95050
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A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

**27.** Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

**28.** Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto on the day and year first above written.

**APPROVED AS TO FORM:**

**CITY OF MORGAN HILL**

\_\_\_\_\_  
HELENE LEICHTER, City Attorney

\_\_\_\_\_  
J. EDWARD TEWES, City Manager

**PROPERTY OWNER(S)**

**Attest:**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
IRMA TORREZ, City Clerk

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE  
ACKNOWLEDGED BY A NOTARY)**

**EXHIBIT "A"**

**DEVELOPMENT ALLOTMENT EVALUATION**

MP-00-21 **& 01-03**: Mission View-Dividend

(See Entire Documents on File in the  
Community Development Department - City Hall)  
CITY OF MORGAN HILL

## EXHIBIT "B"

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### DEVELOPMENT SCHEDULE MP-00-21 & *MP 01-03*: Mission View-Dividend Homes FY 2002-2003, FY 2003-2004

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<b>I.</b>	<b>SUBDIVISION AND ZONING APPLICATIONS</b> Applications Filed:	July 31, 2001
<b>II.</b>	<b>SITE REVIEW APPLICATION</b> Application Filed:	July 31, 2001
<b>III.</b>	<b>FINAL MAP SUBMITTAL</b> Map, Improvements Agreement and Bonds:	<del>March 1, 2002</del> <i>August 1, 2002</i>
<b>IV.</b>	<b>BUILDING PERMIT SUBMITTAL-FY 2002-03</b> Submit plans to Building Division for plan check:	<del>April 2, 2002</del> <i>January 2, 2003</i>
<b>V.</b>	<b>PULL BUILDING PERMITS-FY 2002-03</b> <u>15 permits</u> must be pulled from the Building Division:	May 8, 2003
<b>VI.</b>	<b>COMMENCE CONSTRUCTION-FY 2002-03</b>	

- |  |               |
|--|---------------|
| Construction must have begun on 15 permits.                    | June 30, 2003 |
| <br><b>VII. BUILDING PERMIT SUBMITTAL-FY 2003-04</b>           |               |
| Submit plans to Building Division for plan check:              | April 2, 2003 |
| <br><b>VIII. PULL BUILDING PERMITS-FY 2003-04</b>              |               |
| <u>9 13</u> permits must be pulled from the Building Division: | May 8, 2004   |
| <br><b>IX. COMMENCE CONSTRUCTION-FY 2003-04</b>                |               |
| Construction must have begun on 9 13 permits.                  | June 30, 2004 |

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit, two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least ~~12~~ 14 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

## **EXHIBIT "C"**

### **LEGAL DESCRIPTION** **MP-00-21 & 01-03: Mission View-Dividend**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All of Lot B, as shown on that certain Map entitled "Tract No. 9203, Mission Ranch, Phase 3," which map recorded June 9, 2000 in Book 728 of Maps, pages 28, through 30, inclusive, Santa Clara County Records.

APNs 728-32- 01, 02, 03 & 728-33-01





**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: July 31, 2002**

**Agenda Item # 22**

**Prepared By:**

**Asst. to the City Mgr.**

**Submitted By:**

**City Manager**

**ASSESSMENT OF HAZARDOUS VEGETATION  
MANAGEMENT PROGRAM CHARGES**

**RECOMMENDED ACTION:**

1. **Open/Close** Public Hearing.
2. **Adopt Resolution** ordering the Final Report on the 2002 Hazardous Vegetation Program be transmitted to the County Assessor's Office and that liens be posted against the properties on the report.

**EXECUTIVE SUMMARY:**

Since 1995 when the City contracted with County Fire for fire suppression services, the City's Hazardous Vegetation Management Program has been administered through the Santa Clara County Fire Marshal's Office. The program identifies properties in Morgan Hill with hazardous vegetation and notifies the property owners. The property owners are given a specific timeline to remove the vegetation, and if they do not, the vegetation is removed by a contractor selected by the County. The cost for the abatement is then passed on to the owner as an assessment on their property tax bill.

Six hundred forty three parcels were included in the 2002 Hazardous Vegetation Program. The Fire Marshal's Office has informed us that 126 parcels of land in Morgan Hill were abated by the County contractor this year; 80% of properties were abated by the property owner. The parcels are listed in Exhibit A. At the July 17, 2002 City Council meeting, July 31, 2002 was set as the public hearing date for comments by property owners about the hazardous vegetation program.

On completion of the public hearing, the final stage in the 2002 Hazardous Vegetation Abatement Program is for the Council to order that the abatement expenses incurred be assessed against the owners' property tax bill. This is accomplished by adopting the attached resolution authorizing the transmission of the Final Report to the County Assessor's Office, and that liens be posted against the properties on the report.

**FISCAL IMPACT:**

The Hazardous Vegetation Management Program is user fee supported. The per lot assessment includes costs for doing the weed control work plus the overhead cost to provide the service.

**RESOLUTION NO. 5605**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ORDERING THE FINAL REPORT ON THE 2002 HAZARDOUS VEGETATION PROGRAM BE TRANSMITTED TO THE COUNTY ASSESSOR'S OFFICE AND THAT LIENS BE POSTED AGAINST THE PROPERTIES ON THE REPORT.**

Whereas the City Council, on the 17th day of July 2002, adopted Resolution No. 5604 confirming the Santa Clara County Fire Marshal's Office Final Report on the 2002 Hazardous Vegetation Program; and

Whereas this report identifies properties in Morgan Hill where hazardous weed and brush abatement was conducted by the County of Santa Clara's contractor in accordance with the 2002 Hazardous Vegetation Program; and

Whereas property owners listed on the Final Report were notified of the public hearing conducted on July 31, 2002; and

Whereas properties requiring abatement by the Fire Marshal's Office contractor are to be assessed the abatement cost via a lien on their property taxes;

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Morgan Hill that the Final Report on the 2002 Hazardous Vegetation Program, attached hereto as "Exhibit A", be transmitted to the Santa Clara County Assessors Office and that the Santa Clara County Assessors Office post a lien against the properties on this list in accordance with the appropriate statutes.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Special Meeting held on the 31<sup>st</sup> Day of July, 2002 by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**☞ CERTIFICATION ☞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5605, adopted by the City Council at the Special Meeting on July 31, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 31, 2002***

### **SENIOR ADVISORY COMMITTEE RESOLUTION AND RECOMMENDATIONS REGARDING NUTRITION SITE PROGRAM**

**RECOMMENDED ACTION(S):** Receive Resolution adopted by the Senior Advisory Committee on May 7, 2002 and statement of recommendations regarding kitchen facilities for the senior wing of the new community recreation center.

#### **EXECUTIVE SUMMARY:**

Over the past several months, the Senior Advisory Committee (SAC) has worked to identify the impact the construction of the Community Recreation Center (CRC) will have on the Senior Nutrition Program (Program) and the members of the senior community who participate in that program. The Program is currently operated out of the Friendly Inn and is administered by Catholic Charities, which serves as a contractor to Santa Clara County Department of Social Services. The Program currently serves an average of 75 to 80 lunches per day in a kitchen area of apx. 300 sq. ft. The SAC feels careful consideration must be given to the future location of the Program as well as to the kitchen facilities and equipment.

The County requires dedicated use of the equipment used to prepare meals for the Program. This includes the stove, oven, refrigerator, freezer and appliances. The SAC is concerned that housing the Program at the CRC will preclude other community groups and organizations from having equitable access to kitchen facilities. The SAC recognizes that a full-service kitchen will be available at the Community and Cultural Center, but agree that at least a "warming" kitchen is needed to support programs at the CRC for senior club groups, birthday party support, youth and teen programs, and potlucks. Members of the Committee have conducted site visits to the Cupertino Senior Center and the Evergreen Community Center in San Jose. The Cupertino Senior Center has a separate kitchen and dining room facility for its Senior Nutrition Program and the Evergreen Center has a joint-use agreement between the Santa Clara County and the City of San Jose, which provides organizations and individual residents access to the kitchen on the weekends. Upon meeting with the Senior Nutrition Program Manager at the Evergreen Center, the Committee learned the joint-use agreement has not been as successful as hoped, due to the County's restrictions on equipment use and because there has been repeated theft and abuse of equipment, appliances and utensils by individuals who rent the facility on weekends. Please refer to attachment 3.

The SAC recommends the City consider the following option of constructing two kitchens in the CRC with one kitchen dedicated to the Senior Nutrition Program and a smaller kitchen for community use in order to meet the needs of the Senior Nutrition Program, the senior community and the larger Morgan Hill community for equitable access. On May 21 the Park and Recreation Commission agreed with the statement of recommendations from the SAC and recommend to Council to move forward with their recommendations, noting this programming space could be combined into one area.

**FISCAL IMPACT:** The 600 sq. ft kitchen is in the CRC budget. The SAC recommends construction of a second smaller kitchen of 320 sq. ft. Based on \$407/sq. ft. (BAE analysis 1/02), this adds an additional \$130,240 to the cost of the CRC. The second kitchen is not funded or programmed into the CRC.

**Agenda Item # 23**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Manager, Recreation &  
Community Services**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *July 31, 2002*

**Agenda Item # 24**

**Prepared By:**

**City Attorney**

**Submitted By:**

**City Manager**

### **ADOPT RESOLUTION SUBMITTING A MEASURE TO THE VOTERS AT THE NOVEMBER 5, 2002, ELECTION, SEEKING VOTER VALIDATION OF THE CITY'S EXISTING TRANSIENT OCCUPANCY TAX RATE, AND ADOPT RESOLUTION REGARDING REBUTTAL ARGUMENTS ON MUNICIPAL BALLOT MEASURES**

#### **RECOMMENDED ACTIONS:**

1. Adopt Resolution submitting a measure to the voters at the municipal election of November 5, 2002, seeking voter validation of the City's existing transient occupancy tax.
2. Adopt Resolution authorizing filing of rebuttal arguments regarding measures submitted at municipal elections.

#### **EXECUTIVE SUMMARY:**

Chapter 3.24 of the City's Municipal Code authorizes the City to collect a tax of ten percent (10%) for "the privilege of occupancy in any hotel." (Municipal Code section 3.24.020.) The tax, referred to as a Transient Occupancy Tax ("TOT"), or hotel bed tax, is collected by hotel owners and remitted on a quarterly basis to the City. The TOT is considered a "general" tax because it is deposited into the General Fund with no restrictions on how the proceeds must be spent.

The current rate of the TOT is ten percent (10%). This rate was implemented by the City by Council action in March 1991. Prior to that date the rate was nine percent (9%), which was approved by the voters.

Proposition 218, the "Right to Vote on Taxes Act," was approved by the voters on November 5, 1996. To properly adopt a general tax under Proposition 218, a simple majority vote of the electorate at a regularly scheduled general election for council members must be obtained. (Cal. Const. art. XIIC, section 2(b).) Changes to taxes which result in an increase in "any applicable rate used to calculate the tax . . ." are subject to Proposition 218's voter approval requirements, unless the increased rate or methodology was previously approved. (Government Code section 53750(h).)

General taxes are also circumscribed by Proposition 62, adopted by initiative measure in November 1986. That measure requires that all general taxes be adopted by a two-thirds vote of the legislative body, and approved by a simple majority of the voters "voting in an election on the issue." (Government Code sections 53723, 53724(b).) However, Proposition 62 was not declared constitutional until 1995, when the California Supreme Court overturned lower court decisions declaring the measure unconstitutional. Since 1995, the California courts have vacillated on whether the provisions of Proposition 62 apply to taxes adopted between 1986 and 1995.

To place this issue to rest, and to comply with Propositions 218 and 62, staff recommends that the City Council place a measure on the November 5, 2002, ballot validating the existing ten percent (10%) rate. A resolution ordering placement of the measure, with sample ballot language, is attached. The resolution has as an exhibit an ordinance validating and re-enacting the current tax. The ordinance will become effective upon majority voter approval in November. Pursuant to Government Code 53724(b), the resolution needs a two-thirds vote (four of five) of all the members of the Council to pass.

The second resolution for adoption by the Council simply sets the procedure for filing of rebuttal arguments as required by the California Elections Code.

**FISCAL IMPACT:** The 1% of the TOT that is on the ballot represents approximately \$90,000 of the General Fund for the 2002-03 fiscal year. If the current TOT is not validated, the General Fund budget may need to be adjusted accordingly.

## **RESOLUTION NO. 5606**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SUBMITTING A MEASURE TO THE VOTERS AT THE GENERAL ELECTION OF NOVEMBER 5, 2002, PURSUANT TO GOVERNMENT CODE SECTION 53724 AND ELECTIONS CODE SECTION 9222, SEEKING VOTER VALIDATION OF THE CITY'S EXISTING TRANSIENT OCCUPANCY TAX RATE.**

**WHEREAS**, on Chapter 3.24 of the City's Municipal Code authorizes the City to collect a transient occupancy tax ("TOT") for "the privilege of occupancy in any hotel"; and,

**WHEREAS**, prior to March 1991, the TOT rate was nine percent (9%) of the room rate charged by the hotel operator to the hotel user; and,

**WHEREAS**, in March 1991, pursuant to Ordinance 1017, the City Council adopted an additional one percent (1%) TOT, ("Supplemental TOT") for a total TOT rate of ten percent (10%); and,

**WHEREAS**, on November 4, 1986, the voters of California approved Proposition 62, which requires that all general taxes be adopted by a two-thirds vote of the legislative body, and approved by a simple majority of the voters "voting in an election on the issue"; and,

**WHEREAS**, Proposition 62 was not declared constitutional until 1995, when the California Supreme Court overturned lower court decisions declaring the measure unconstitutional; and,

**WHEREAS**, since 1995, the California courts have vacillated on whether the provisions of Proposition 62 apply to taxes adopted between 1986 and 1995; and,

**WHEREAS**, on November 6, 1996, the voters of California approved Proposition 218, which added Articles XIII C, section 2(c) of the California Constitution, which requires that any general tax, such as the TOT, must be approved by a majority vote of the voters voting on the issue of the imposition of the tax; and,

**WHEREAS**, a general election is to be held throughout the State of California on November 5, 2002, and, pursuant to Resolution No. 5578, adopted on June 19, 2002, the City Council of the City of Morgan Hill called a General Municipal Election to be held in consolidation with the General Election on the same date; and,

**WHEREAS**, the City Council of the City of Morgan Hill, pursuant to Government Code section 53724 and Elections Code section 9222, desires to submit to the voters at the General Municipal Election a question relating to the validation of the City's current Transient Occupancy Tax.

**NOW, THEREFORE,** the City Council of the City of Morgan Hill, based upon all documents, statements and facts known to the City, does hereby resolve:

**SECTION 1. Proposal of General Tax.** The validation and enactment of certain provisions of the City of Morgan Hill's Transient Occupancy Tax, Chapter 3.24 of the Municipal Code, as a general tax at a rate not to exceed ten percent (10%), is hereby proposed pursuant to Article XIIC, Section 2(b) of the California Constitution and California Government Code section 53724, in the form and rates stated in Ordinance No. 1580, New Series, which is attached hereto as Exhibit A and incorporated herein by this reference. The type of tax, the rate of tax, and the method of its collection are set forth in Ordinance No. 1580, New Series. This proposal shall be presented to the voters of the City at the General Municipal election to be held on November 5, 2002.

**SECTION 2. Ballot Language/Text of Proposed Measure.** Pursuant to Elections Code section 9222, the City Council of the City of Morgan Hill hereby orders that the following question be submitted to qualified electors at the General Municipal Election on November 5, 2002:

Shall Ordinance 1580, New Series, be adopted to authorize the City to continue to impose the Transient Occupancy Tax at the current rate of 10% of the room rate?	YES	NO
--	-----	----

**SECTION 3. Election Instructions; Notice of Time and Place of Election; Submission of Ballot Arguments; and Impartial Analysis.**

a. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

b. Notice of the time and place of holding the election is hereby given as stated in Resolution 5578, which is incorporated herein by reference.

c. The City Council hereby authorizes the following council members to file a written argument in favor of the measure noted above in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted:

d. The City Council hereby authorizes the following council members to file a written argument against the measure noted above in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted:

e. Pursuant to Elections Code section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of adoption of this Resolution.

**SECTION 3. Submission of Resolution.** The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Elections Department of the County of Santa Clara.

**SECTION 4. CEQA.** The City Council finds that pursuant to California Environmental Quality Act ("CEQA") Guidelines 15060(c)(2) and 15378(b)(2) and (4), this action does not constitute a project under CEQA and therefore review under CEQA is not required.

**SECTION 5. Severability.** If any portion of this Resolution is declared invalid by a court of competent jurisdiction, then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Special Meeting held on the 31<sup>st</sup> Day of July, 2002 by the following vote.

**AYES:            COUNCIL MEMBERS:**  
**NOES:          COUNCIL MEMBERS:**  
**ABSTAIN:      COUNCIL MEMBERS:**  
**ABSENT:       COUNCIL MEMBERS:**

**🦉 CERTIFICATION 🦉**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. 5606, adopted by the City Council at the Special Meeting on July 31, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **EXHIBIT A**

### **ORDINANCE NO. 1580, NEW SERIES**

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL VALIDATING AND RE-ENACTING A TRANSIENT OCCUPANCY TAX (HOTEL BED TAX)**

**WHEREAS**, on Chapter 3.24 of the City's Municipal Code authorizes the City to collect a transient occupancy tax ("TOT") for "the privilege of occupancy in any hotel"; and,

**WHEREAS**, prior to March 1991, the TOT rate was nine percent (9%) of the room rate charged by the hotel operator to the hotel user; and,

**WHEREAS**, on March 26, 1991, pursuant to Ordinance 1017, the City Council adopted an additional one percent (1%) TOT, to increase the TOT rate to a total of ten percent (10%); and,

**WHEREAS**, on November 4, 1986, the voters of California approved Proposition 62, which requires that all general taxes be adopted by a two-thirds vote of the legislative body, and approved by a simple majority of the voters "voting in an election on the issue"; and,

**WHEREAS**, a number of appellate courts, including in the case of *City of Woodlake v. Logan*, 230 Cal.App.3d 1058 (1991), decided that Proposition 62's requirement that general taxes be submitted to a referendum violated the California Constitution and was therefore unenforceable; and,

**WHEREAS**, Proposition 62 was not declared constitutional until December 14, 1995, in the case of *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal.4th 220 (1995), in which the California Supreme Court overturned lower court decisions declaring the measure unconstitutional; and,

**WHEREAS**, since 1995, the California courts have vacillated on whether the provisions of Proposition 62 apply to taxes adopted between 1986 and 1995; and,

**WHEREAS**, on November 6, 1996, the voters of California approved Proposition 218, which added Articles XIIC, section 2(c) of the California Constitution, which requires that any general tax, such as the TOT, must be approved by a majority vote of the voters voting on the issue of the imposition of the tax; and,

**WHEREAS**, on June 4, 2001, the California Supreme Court decided *Howard Jarvis Taxpayers Association v. City of La Habra*, 26 Cal.4th 236 (2001), which suggests that the City should seek voter approval of the ordinance increasing the TOT rate to ten percent (10%), and the City Council thereafter proposed this Ordinance to the voters to validate the ordinance.

**WHEREAS**, since 1991 the California State Legislature regularly balanced the budget of the State of California by taking a portion of the property taxes formerly paid to local agencies and

giving those monies to the State, thereby resulting in a reduction of real revenue to fund governmental services, including police and fire; and,

**WHEREAS**, following terrorist attacks against the United States on September 11, 2001, all governmental units, including the City, have incurred and will continue to incur increased demands for police, fire and other emergency services, and maintaining the existing ten percent (10%) rate of the transient occupancy, or hotel bed, tax, is required to assist the City pay for such services; and,

**WHEREAS**, the slowing state and national economy, together with the effects of the energy crisis, have placed the state in a fiscal deficit, a deficit that will likely lead to further reductions in state funding for City services, and maintaining the existing ten percent (10%) rate of the transient occupancy, or hotel bed, tax is required to assist the City in maintaining general governmental services to the community in light of these fiscal threats.

**NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Amendment or Repeal.** Chapter 3.24 of the Municipal Code of the City of Morgan Hill may be repealed or amended by the City Council without a vote of the people except as follows: as required by Propositions 62 and 218, any amendment to Chapter 3.24 that increase the amount or rate of tax beyond the levels authorized by this Ordinance must first be approved by a vote of the people.

**SECTION 2. Validation of Existing Ordinance.** Ordinance No. 1017, New Series, of the City of Morgan Hill, which increased the rate of the transient occupancy tax from nine percent (9%) to ten percent (10%), is hereby validated and re-approved, or approved to the fullest extent permitted by law.

**SECTION 3. Re-enactment and Re-adoption of Existing Ordinance.** Ordinance No. 1017, New Series, of the City of Morgan Hill, which increased the rate of the transient occupancy tax from nine percent (9%) to ten percent (10%), is hereby re-enacted and re-adopted.

**SECTION 4. Intent.** Section 2 of this Ordinance is intended to authorize the continued collection of the transient occupancy tax, to validate the adoption of that tax, and to validate taxes previously collected pursuant to Ordinance 1017, New Series. Section 3 of the Ordinance is intended to authorize future collection of the transient occupancy tax at the ten percent (10%) rate in the event it is determined that Section 2 is not sufficient to do so.

**SECTION 5. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 6. Effective Date; Publication.** This Ordinance shall take effect ten (10) days after the

vote upon it, to be taken at the General Municipal Election of November 5, 2002, is declared by the city Council as provided by California Elections Code section 9217 and 9222. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 7. Execution.** The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

The foregoing ordinance was passed, approved, and adopted by the people of the City of Morgan Hill, voting on the 5<sup>th</sup> Day of November, 2002.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**☪ CERTIFICATE OF THE CITY CLERK ☪**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1580, New Series, passed, approved, and adopted by the people of the City of Morgan Hill, voting on the 5<sup>th</sup> Day of November, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## **RESOLUTION NO. 5607**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE FILING OF REBUTTAL ARGUMENTS REGARDING MEASURES SUBMITTED AT MUNICIPAL ELECTIONS**

**WHEREAS**, sections 9220 and 9285 of the Elections Code of the State of California authorize the City Council to adopt, by majority vote, provisions governing the filing of rebuttal arguments regarding measures submitted at municipal elections; and,

**WHEREAS**, the City Council believes that full discussion of the merits and drawbacks of ballot measures is an inherent democratic principle, and rebuttal arguments allow various opinions and voices to be heard on issues presented to the citizens of the City.

**NOW, THEREFORE**, the City Council of the City of Morgan Hill, based upon all documents, statements and facts known to the City, does hereby resolve:

**SECTION 1. Authorization of Rebuttal Arguments.** Pursuant to Sections 9220 and 9285 of the Elections Code of the State of California, when the City Clerk has selected arguments for and against a measure to be printed and distributed to voters, the Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against the measure to the authors of the argument in favor of it. The authors of each argument may submit a rebuttal argument not exceeding 250 words in length. Rebuttal arguments shall be filed with the City Clerk not more than 10 days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as direct arguments and immediately following the direct argument it rebuts.

**SECTION 2. Repeal of Previous Resolutions.** All previous resolutions providing for the filing of rebuttal arguments regarding city measures are hereby repealed.

**SECTION 3. Application of Subsequent Municipal Elections.** The provisions of Section 1 of this Resolution shall apply to the next ensuing municipal election and to every subsequent municipal election until this Resolution is repealed.

**SECTION 4. Submission of Resolution.** The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Elections Department of the County of Santa Clara.

**SECTION 5. CEQA.** The City Council finds that pursuant to California Environmental Quality Act ("CEQA") Guidelines 15060(c)(2) and 15378(b)(2) and (4), this action does not constitute a project under CEQA and therefore review under CEQA is not required.

**SECTION 6. Severability.** If any portion of this Resolution is declared invalid by a court of

competent jurisdiction, then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Special Meeting held on the 31<sup>st</sup> Day of July, 2002 by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**🏛️ CERTIFICATION 🏛️**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. 5607, adopted by the City Council at the Special Meeting on July 31, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

**TITLE: APPOINTMENT TO THE BOARD OF  
DIRECTORS OF THE MORGAN HILL  
DOWNTOWN ASSOCIATION**

**RECOMMENDED ACTION:**

Appoint a "City Liaison" Board Member for the Morgan Hill Downtown Association.

**Agenda Item # 25**

**Prepared By:**

**Analyst**

**Approved By:**

**BAHS Director**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:**

On June 26, 2002, the Redevelopment Agency Board approved an agreement with the Morgan Hill Downtown Association (MHDA) to implement a Main Street Program.

The MHDA's interim board is now in the process of forming the permanent nine member board of directors. The By-Laws of the MHDA specify that one of the directors, the "City Liaison", shall be a representative of the City of Morgan Hill. Like his/her counterpart from the Chamber of Commerce, the Liaison Director votes only as necessary to break a tie vote by the other directors.

Currently, Councilman Sellers sits as a regular director on the interim board and City staff fills the City Liaison seat. It should be noted that City staff will continue to attend the MHDA board meetings even if we are not an official board member. Staff recognizes the importance of maintaining close ties with MHDA during its start-up phase.

A director on the board of the MHDA normally serves for a term of three years. This initial board, however, will have three directors who will only serve a one-year term. Three other directors will serve two-year terms. These shortened terms will allow future directors to step down without disturbing the continuity of the board. The new directors will determine which of their members will have the shortened terms.

Staff requests that the City Council appoint a councilmember, staff person, or other individual to be the City Liaison Board Member.

**FISCAL IMPACT:**

No budget adjustment required.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

**Agenda Item # 26**

**Prepared By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**

### **DESIGNATE VOTING DELEGATE TO THE LEAGUE OF CALIFORNIA CITIES' ANNUAL CONFERENCE AND CONSIDERATION OF CANCELLATION OF THE OCTOBER 2, 2002 CITY COUNCIL MEETING**

#### **RECOMMENDED ACTION:**

1. **Approve** appointment by Mayor of Voting Delegate and Alternate Voting Delegate to the League of California Cities' Annual Conference.
2. **Direct** the City Clerk to Complete the Voting Delegate Form and **Forward** said form to the League of California Cities.
3. Council **Discussion** and **Direction** regarding cancellation of the October 2, 2002 City Council Meeting

#### **EXECUTIVE SUMMARY:**

The League of California Cities will be holding its Annual Conference Wednesday, October 2 through Saturday, October 5, 2002 in Long Beach. At the Annual Conference, the League conducts its Annual Business Meeting where League Members take action on conference resolutions. These resolutions help guide cities and the League in its efforts to improve the quality, responsiveness and vitality of local government in California. The League's bylaws stipulate that each city is entitled to one vote on matters affecting municipal or League policy. The Annual Business meeting is scheduled for Saturday, October 5 at 10:15 a.m. at the Long Beach Convention Center. The memorandum from the League of California Cities requesting the Designation of a Voting Delegate for the League's Annual Conference is attached to the staff report.

The League of California Cities will be mailing its Resolutions to cities after August 16. Staff will take these Resolutions to the City Council's Legislative Committee for their review and recommendation. The City Council will have the opportunity to review the Resolutions in September in advance of the League's Annual Business meeting. It is being requested that the Mayor and the City Council appoint a delegate and an alternate to serve as the City's voting delegate for the League's Annual Conference and that staff be directed to submit these names to the League of California Cities. Mayor Kennedy has indicated that he would like to appoint the Council Legislative Committee to serve as the City's voting delegates with Mayor Pro Tempore Carr serving as the primary delegate and Council Member Sellers as the alternate.

A majority of the City Council has expressed an interest in attending this Conference. Should the Council wish to participate in the opening day ceremonies, the Council may wish to consider canceling its October 2 meeting. The Council could consider scheduling a special meeting on Tuesday, October 1 or Monday, October 7 should the Council feel it necessary to hold a meeting.

**FISCAL IMPACT:** The time necessary to prepare this staff report is accommodated in the Council Services & Records Manager's operating budget.



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**Agenda Item # 27**

**Prepared By:**

**Manager, Recreation &  
Community Services**

**Submitted By:**

**City Manager**

**COUNCIL VISITS TO RECREATION CENTERS FOR  
PROGRAMING AND FACILITY COMPARISONS**

**RECOMMENDED ACTION(S):**

1. Select a sub-committee to visit comparable recreation centers and report back to Council;
2. Authorize sub-committee to visit comparable recreation centers in CA and CO to review programing spaces and facility layout;
3. Return with suggestions for the design of the proposed community recreation center.

**EXECUTIVE SUMMARY:**

Council and City Staff have been working on the programing spaces and square footage for design purposes of the community recreation center to be located on the former Gunderson property. Recreation & Community Services Manager Spier was able to attend the Recreation Facilities Design and Management School held in June in Denver, CO. Staff was able to attend tours to eleven recreation centers that have programing spaces comparable to the spaces proposed for the community recreation center. The “backdoor tours” and information shared by staff at these sites provided valuable information and insights to the synergy of spaces and potential lessons to apply to the design of our new center.

The Denver area is rich with publicly developed and operated community recreation centers. There are over 22 centers within an hour’s drive in every direction from downtown Denver. This proximity makes it a great location for touring a variety of facilities in only several days. Staff is proposing that Council consider sending a sub-committee to tour selected facilities that best exemplify the programing spaces proposed. This would also be an opportunity to view three facilities that are combined recreation and senior centers located in Golden, East Boulder and Loveland, and to tour two new facilities that represent the state of the art in recreation facility design. The Wheat Ridge Community Recreation Center, which opened last year and Longmont Recreation Center which opened in March, have the same recreation components included in our proposed community center.

The tours provide an opportunity to discuss operational issues with the facility staff, compare facility components and space sizes to that proposed for our center while experiencing first hand the local community benefit. After each tour there will be an opportunity to discuss each facility, list ideas and notes in a workbook; highlight preferred features; and witness programing and design elements in use. The tour will be lead by Sports Management Group, who have been involved with the development of many of the facilities mentioned above. Visualization of how the programing space, operations, and participant interaction occurs has prompted many new ideas and the confidence to review choices made.

As with the tour Council and staff took before completing the design of the Community and Cultural Center, an opportunity to visit comparable facilities before completing design of the community recreation center would be an invaluable insight. Staff and Council have taken the opportunity to visit Monterey Sports Center and Roseville Community Center. The Colorado facilities provide a more cutting edge and full programing comparison.

**FISCAL IMPACT:** Funds available in the project CIP account.



## ATTACHMENT A

### **Tentative Schedule:**

Day 1 Day we arrive and Golden Recreation Center and Outdoor Aquatics

Day 2 East Boulder, Loveland and Longmont

Day 3 Wheat Ridge and Apex and home

## **SUMMARY OF PROPOSED FACILITIES TO TOUR**

### **EAST BOULDER COMMUNITY CENTER**

53,000 sq. ft (opened 1992). A combined recreation/senior center, it includes a 119 foot waterslide, 8-lane competitive pool, warm-water instruction and leisure pool, hot tub and sauna. Rooms included in the center are aerobic, dance, weight and cardiovascular, gymnasium, men's and women's locker rooms, family locker room, activity, craft, child fun, large commons/multi-use with industrial kitchen, lobbies and offices. The center is located in the midst of a 53 acre park with incredible views.

### **GOLDEN COMMUNITY CENTER**

55,300 square feet (opened 1994). Aquatics area with 25 meter lap pool, leisure pool, therapy pool. Gymnasium, elevated track, weight room, climbing wall, dance/fitness room, meeting rooms, craft rooms, child care, youth room, community room with kitchen, senior lounge, offices and lobby area.

### **LONGMONT RECREATION CENTER**

65,000 sq. ft. (opened 1994). Leisure aquatic area consisting of 2 separate pools. The larger pool combines a traditional 25 yard, 6 lane lap pool with a wave function and diving board. The second pool includes a lazy river, a vortex pool and a 150 foot water slide. Full-size gymnasium, dance/fitness room, 3 racquetball courts, indoor 1/12 mile running track, pre-school room, child care room, gymnastics center, large multi-use room, men, women, and family locker rooms, and a conditioning center with circuit weight machines, free weights and cardiovascular equipment.

### **WHEAT RIDGE RECREATION CENTER**

70,000 sq. ft., (opened 2000). Lap pool/leisure aquatic area with water slide, current channel and warm water exercise area, whirlpool, steam, sauna, family locker room, double gymnasium, climbing wall, racquetball, aerobics room, cardio/free weight area, exercise track, child care, game room, community room with kitchen, classrooms.



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**Agenda Item # 28**

**Prepared By:**

**Manager, Recreation &  
Community Services**

**Submitted By:**

**City Manager**

**COMMUNITY AND CULTURAL CENTER**

**GRAND OPENING CELEBRATION WEEK**

**RECOMMENDED ACTION(S):**

1. Appoint a Council member to act as chair of the Community and Cultural Center Grand Opening Celebration Week Committee;
2. Provide a date for the kick-off planning meeting;
3. Provide staff with suggestions on whom to recruit for the volunteer citizen planning committee

**EXECUTIVE SUMMARY:**

Council and City Staff are anxiously counting down the days to the grand opening of the Community and Cultural Center scheduled for December 2002. Staff was asked by Council to establish a volunteer citizen committee to assist staff and Council in the planning and implementation of a Grand Opening Celebration Week to showcase the new center to the community.

Staff is recommending that Council City appoint a Council member to act as chair of this volunteer committee. Staff will plan a "kick-off" committee meeting for the week of August 12-16.

The Parks and Recreation Commission have agreed to participate with the planning committee. Staff would also be interested in receiving Council's recommendations on whom to recruit for this event planning committee.

**FISCAL IMPACT:** \$10,000 has been allocated for the week-long festivities.



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 31, 2002***

**Agenda Item # 29**

**Prepared By:**

**Manager, Recreation &  
Community Services**

**Submitted By:**

**City Manager**

**COMMUNITY AND CULTURAL CENTER AND  
PLAYHOUSE FACILITY USE AND RESERVATION  
POLICIES**

**RECOMMENDED ACTION(S):**

1. Receive report and review comments from the Parks and Recreation Commission;
2. Provide comments to staff;
3. Direct staff to prepare a resolution to incorporate the proposed facility use rental fees and reservation policies for the Community and Cultural Center and Playhouse.

**EXECUTIVE SUMMARY:**

In preparation for the opening of the new Community and Cultural Center, we will present a comprehensive recommendation for operating policies and fees at the meeting on August 21<sup>st</sup>. It is staff's intent to begin marketing and accepting reservations for the Community and Cultural Center by September 1, 2002 for the year 2003 with the hiring of the event coordinator. Staff will be marketing the facility at the Taste of Morgan Hill event in September. In preparation for the marketing and reserving of the center, policies, procedures and fees have to be in place.

Staff has presented to Council during the budget workshops proposed rental rates and assumptions for cost recovery. (Attachment B). The proposed rental rates as shown on Attachment B reflect comments received at the budget workshops with some reduced rental rates. These new rates will affect cost recovery goals, but staff anticipates may be offset with increased market share, community acceptance of rates, and the additional rental category for the arts and ceramics rooms, and amphitheater. Staff acknowledges these goals are high and will require aggressive marketing and reduced opportunity for subsidized or no-fee uses.

We would appreciate Council feedback and policy direction on the four issues identified in Attachment A.

**Parks and Recreation Commission**

The Parks and Recreation Commission had the following comments at their meeting on July 16.

They had concern that there was no rental fee listing for the art rooms. Chair van Keulen expressed concern about the fees charged for non-profits as possibly too high. Commissioners Kenney and Page felt the non-profit fees were fine and to take a wait and see approach before making changes.

**FISCAL IMPACT:** Rental rates are based on budget projections reviewed by Council during the budget workshops and reflect cost recovery assumptions.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 31, 2002***

### **APPOINTMENT TO FILL ONE VACANCY ON THE PARKS AND RECREATION COMMISSION**

#### **RECOMMENDED ACTION:**

Appoint one Applicant to fill Vacancy on the Parks and Recreation Commission

#### **EXECUTIVE SUMMARY:**

Earlier in the July 31, 2002 meeting, the City Council interviewed Robert Graham and Marilyn Librers to fill a vacancy created by the resignation of Commissioner Wayne Tanda. Based on the rankings of the two applicants, staff recommends the Mayor's appointment of the highest ranked applicant to serve Mr. Tanda's unexpired term to May 1, 2004.

**FISCAL IMPACT:** The time necessary to prepare this staff report is accommodated in the Council Services & Records Manager's operating budget.

**Agenda Item # 30**

**Prepared By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**



**REDEVELOPMENT AGENCY  
STAFF REPORT  
MEETING DATE: July 31, 2002**

**TITLE: COMMUNITY AND CULTURAL CENTER**

**RECOMMENDED ACTIONS:**

1. Provide direction regarding installation of an upgraded transit shelter and appropriate up to \$30,000 as required from the RDA Unreserved Fund Balance (fund 317).
2. Provide direction regarding installation of upgraded identification signs and appropriate up to \$40,000 as required from the RDA Unreserved Fund Balance (fund 317).
3. Provide direction to staff regarding naming schemes for buildings and rooms at the Community and Cultural Center.

**Agenda Item # 31**

**Prepared By:**

**Community  
Development Director**

**Submitted By:**

**Executive Director**

**EXECUTIVE SUMMARY:** As the construction of Community and Cultural Center campus proceeds, members of the community are beginning to realize what a prominent and beautiful campus this will be. Certainly, it will become recognized as a centerpiece landmark of our community. As completion of this project progresses, two issues have surfaced:

1. **Upgraded transit shelter and identification signs:** In the development of the plans for the Community and Cultural Center, the existing VTA standard transit shelter at Monterey near Dunne will be relocated further north near the front of the Gavilan College building. The existing shelter is rather austere in appearance and may be seen as detracting from the Center's architecture. At the Agency's direction, an upgraded design which is more in harmony with the Center's elegance may be more fitting. Staff could explore upgraded manufactured transit shelter options or a custom shelter could be designed and built. It is estimated that a custom shelter would cost about \$5,000 to design and additional \$25,000 to construct. Discussions are underway with the VTA regarding ongoing maintenance of an upgraded shelter should it replace the existing VTA maintained standard transit shelter.

Two Community and Cultural Center campus identification signs are proposed for the project, one at Dunne & Depot and one fronting Monterey Rd. These signs are in the process of being designed with an existing budget of \$10,000. The architect is concerned that these may be dwarfed in quality and prominence by the Center itself. The architect suggests that larger signs (approximately 12 feet long and four to six feet high) constructed of concrete or stucco and wood may be more appropriate and complimentary to the buildings. The estimated cost to upgrade both of these signs would add about \$40,000 to the budgeted \$10,000.

2. **Building and room identification themes:** Construction of the Community and Cultural Center has reached a point where building and room designation signs need to be developed and ordered. Attached are several designation themes for which staff requests input and direction from the Agency.

**FISCAL IMPACT:** Upgraded transit shelter and campus identifications signs would require an appropriation of up to \$70,000 from the RDA Unreserved Fund Balance (fund 317). Currently there is \$850,000 remaining in the Agency's "unallocated Fund" of \$1.3m. This allocation would reduce the "Fund" to \$780,000.

# **Morgan Hill Community and Cultural Center Building and Room Designation Schemes**

## **The Campus:**

The entire campus of the Community and Cultural Center is designed to provide the community with a site for educational, cultural and recreational opportunities as well as a facility to hold meetings and other private and community events. It is indeed a rather complete center of community culture and other activities. The entire complex is essentially comprised of four main buildings and two outdoor spaces interconnected by walkways, patios and breeze ways. These are:

- The Community Center building itself,
- Gavilan Community College Annex
- The Playhouse
- The Children's Activity Center building
- The Outdoor Amphitheater
- The Rose Garden

In developing designation names for the overall facility and the individual buildings and outdoor spaces, it is important that visitors can not only find their way to the facility, but also the various locations within it once they arrive on site. Therefore, the major campus components should be given designations that, while seemingly generic, clearly describe their function. In addition, throughout the course of community involvement in the development and construction of the project, functional names for the various spaces have been so widely used and advertised, that community members will likely identify with and continue to use their more generic designations despite other names that may be assigned to them. Examples of where generic names tend to stick include the San Jose Arena (although it is officially named The Compaq Center) and the Oakland Coliseum (which is officially named the Network Associates Park). With this in mind, the following campus component designation names are suggested to be simple, descriptive and most appropriate:

The Entire Campus:	Morgan Hill Community & Cultural Center		
Community Center building:	Community Center	or	Arts and Conference Center
Gavilan College Annex:	Gavilan Community College	or	Gavilan College Annex
Playhouse:	Community Playhouse	or	Performing Arts Theater
Children's Activity Center:	Children's Pavilion	or	Children's Activity Pavilion
Amphitheater:	Amphitheater	or	The Plaza Theater
Rose Garden:	Rose Garden		

## **Rooms within the Community Center building:**

The Community Center Building itself is comprised of a number of meeting and activity rooms which provides the opportunity to link these rooms to prominent names identified with our community. Staff has developed a number of alternative themes for the Agency's input and direction. While truly subjective in nature, staff has developed three distinct themes:

### **1. General Names Identified with Morgan Hill Theme:**

Large Multi-purpose Room:	El Toro Room
Octagonal Room:	Via Miramonte Room
Dance Room:	Mt. Madonna Room
Fine Arts Room:	Madrone Room
Ceramics Room:	Sycamore Room
Conference Room:	Poppy Jasper Room
Multi-purpose Meeting room:	Diana Murphy Room

2. Early Morgan Hill Settlers Theme:

Large Multi-Purpose Room:	Hiram Morgan Hill Room
Octagonal Room:	Diana Murphy Room
Dance Room:	Howard Tilton Room
Fine Arts Room:	Henry Coe Room
Ceramics Room:	William Tennant Room
Conference Room:	John Acton Room
Multi-purpose Meeting room:	Isola Kennedy Room

As an option to this theme, one could also consider naming the two outdoor areas as follows:

Rose Garden:	Sarah Althea Hill Rose Garden
Amphitheater:	Charles Kellogg Amphitheater

3. Historic Geographic Location Theme:

Large Multi-Purpose Room:	Willow Springs Room
Octagonal Room:	El Toro Room
Dance Room:	Paradise Valley Room
Fine Arts Room:	Llagas Valley Room
Ceramics Room:	Hayes Valley Room
Conference Room:	Madrone Room
Multi-purpose Meeting Room:	Uvas Valley Room

These themes are not intended as being all inclusive. Certainly, other names or other themes could be substituted for those listed here. The suggested themes do provide three distinct directions that can be used to gauge the Agency's preferences. Once the Agency's preference is known, specific names can be developed further as needed. It should be noted however, that the time is quickly approaching when the facility and room names need to be submitted so that various signs and directories can be ordered, built and installed in time for the Center's completion.



**REDEVELOPMENT AGENCY**  
**MEETING DATE: July 31, 2002**

**Agenda Item # 32**

**Prepared By:**

**Manager, Recreation &  
Community Services**

**Submitted By:**

**Executive Director**

**SELECTION OF ARCHITECTURAL SERVICES  
FOR AQUATIC COMPLEX PHASE I**

**RECOMMENDED ACTION(S):**

Authorize the Executive Director to negotiate, prepare and execute a contract with ESL for the purpose of architectural services for the design and construction of phase one of the aquatic complex at a cost not to exceed \$860,000.

**EXECUTIVE SUMMARY:**

On June interviews were conducted with four firms who were short-listed to present their qualifications and process for architectural services for phase one of the Aquatic Complex. These four firms were selected from an initial list of thirteen submissions. A seven member interview panel consisting of Mayor Kennedy, Council member Carr, PRC member Kenney, MH Aquatics, Inc. member Acevedo, and staff Toy, Ashcraft and Spier, rated the four firms and made the recommendation to select ELS and their project team with aquatics sub-contractor Rowley, International.

Phase one include a 50 meter competition pool, 8,000 sq. ft. recreational pool, portion of the club house, parking, and infrastructure to support these elements. All of the utility and supporting elements including pumps, cleaners, and infrastructure for the entire Aquatics Complex will be installed to ease the development of future phases. This phase will also include the initial closing of Barret Street for through traffic use.

Staff is conducting background and reference checks and upon successful review will move forward with contract negotiations if directed by the Redevelopment Board. ELS is being recommended based on their experience, strength of their project knowledge and ability to begin work on the project on an accelerated schedule.

Attachment A: CIP Aquatics from 2002-2003 Budget

B. ELS Scope of Work, Proposed Fee, Proposed Project Schedule

**FISCAL IMPACT:** \$1.48 million has been allocated for professional services in the CIP for 2002-2003.